

**NOTIFICATIONS UNDER ARTICLE 22.2 OF THE AGREEMENT
ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

POLAND

The following communication, dated 9 November 1998, has been received from the Permanent Mission of the Republic of Poland.

In conformity with Article 22 of the Agreement on Implementation of Article VII of GATT 1994 and further to the Decision on Notification and Circulation of National Legislation taken on 12 May 1995, the Representative of the Republic of Poland submits the enclosed notification of national legislation.

The notification consists of:

1. Customs Code of 9 January 1997.¹
2. Regulation of Council of Ministers on the detailed procedure of determining customs valuation of imported goods.
3. Regulation of the Minister of Finance on principles of applying the rate of exchange of foreign currencies set by the President of the Narodowy Bank Polski and announced by the Narodowy Bank Polski for the purpose of determining customs value.
4. Regulation of the President of the Central Customs Office "Explanations Concerning Customs Valuation".²

¹ The portion dealing with customs valuation is attached only. The entire legislation is available for consultation in the Secretariat, Room 3128.

² The first page of the Regulation is attached only. The entire Regulation, which consists of Decisions and explanations of the World Customs Organisation, is available for consultation in the Secretariat, Room 3128.

ACT

of 9 January, 1997

THE CUSTOMS CODE

(Journal of Laws of the Republic of Poland 1997, No. 23, item 117 with subsequent amendments: Journal of Laws of the Republic of Poland 1997, No. 64, item 407 and No. 121, item 770, No. 157, item 1026, No. 160, item 1084)

SECTION III. CUSTOMS VALUE OF GOODS

Article 21. The customs value of goods shall be determined in order to fix the amount of customs debt and other charges collected by customs authorities as well as for the purpose of applying measures of commercial policy.

Article 22. § 1. The terms used in this Chapter shall have the following meaning:

- 1) manufacturing - breeding, producing, excavating;
- 2) identical goods - goods manufactured in the same country, the same in all respects, including physical characteristics, their quality and reputation; minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical
- 3) similar goods - goods manufactured in the same country, which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar
- 4) goods of the same class or kind - goods which fall within a group or range of goods produced by a particular industry or industry sector, covering identical or similar goods
- 5) buying commission - fees paid by the buyer of the goods to his agent for services consisting in representation of the buyer in the purchase of goods, for which the customs value is being assessed.

§ 2. Persons shall be deemed to be related if:

- 1) one of the persons is an official, director or a member of a managing body or supervising body of another person; or
- 2) they are legally recognised partners in business; or
- 3) they are employer and employee ; or
- 4) one of the persons possesses or has at his direct or indirect disposal the rights to vote or participates in the initial or share capital, at least 5 per cent of total votes or at least 5 per cent of initial or share capital of another person; or
- 5) one of them directly or indirectly controls the other person; or
- 6) both of them are directly or indirectly controlled by a third person ; or
- 7) together they directly or indirectly control a third person; or
- 8) they are spouses or relatives by blood or affinity up to the second degree or related by adoption; or
- 9) one person is an exclusive distributor or concessionary of another person in their economic activity, provided that they comply with the criteria specified in the subparagraphs 1 to 8.

§ 3. Goods manufactured on the basis of works in the field of technical engineering, research and development, artistic work, designing, as well as plans and drafts, made within the customs territory of Poland, with regard to which no correction can be made pursuant to Article 30, paragraph 1, subparagraph 2, letter d, shall not be deemed identical nor similar.

§ 4. If the person who manufactured goods, the customs value of which is being assessed, does not manufacture similar or identical goods, goods manufactured by other persons may be taken into account.

Article 23. § 1. The customs value of goods shall be the transaction value of goods, i.e. the price actually paid or payable for goods sold for the purpose of their importation into the customs territory of Poland, said price being determined, if required, on the basis of Articles 30 and 31.

§ 2. The transaction value of goods cannot be the customs value when:

1) there are no limitations on the disposal or use of the goods by the buyer other than those:

a) which are imposed or required by law;

b) which restrict the customs territory, on which the goods may be resold;

c) which do not affect the value of goods in any substantial way; or

2) the sale or price of the goods are dependent on the condition met or performances effected, the value of which cannot be determined ;

3) any part of revenues from further resale, disposition or use of goods by the buyer does not fall directly or indirectly to the seller, unless pursuant to Article 30, a proper correction may be made; or

4) the buyer and the seller are related, unless the transaction value may be accepted in order to determine the customs value in accordance with paragraph 3.

§ 3. When determining, whether the transaction value may be accepted in order to apply the provisions of paragraph 1, the fact that the buyer and the seller are related shall not itself be grounds for rejecting the transaction value. If necessary, the circumstances of sale shall be examined and the transaction value accepted, where it is found that the relationship between the seller and buyer has not affected the price. If, on the basis of information obtained from the declarant or from other sources, the customs authorities have reasons to infer that the relationship affected the price, such reasons shall be stated to the declarant and the declarant will be given an opportunity to respond. The information stating such reasons shall be given in writing, if so requested by the declarant.

§ 4. In case of a transaction between related persons, the transaction value shall be accepted and the customs value of goods shall be determined in accordance with paragraph 1, if the declarant proves that such value is comparable to one of the following values at the same or approximately the same time:

1) transaction value of identical or similar goods which entered into the customs territory of Poland and which are sold to the buyer, in any case unrelated to the seller;

2) customs value of identical or similar goods determined in accordance with the provisions of Article 27;

3) customs value of identical or similar goods determined in accordance with the provisions of Article 28.

§ 5. When applying the criteria, referred to in paragraph 4 above, the differences in the volume of trade (retail and wholesale), quantitative differences, costs enumerated in Article 30 as well as costs incurred by the seller in transactions, in which the buyer is a person unrelated to him, and these costs do not arise in the transaction between the seller and the person related to him, shall be taken into account.

§ 6. The criteria specified in paragraph 4 may be applied only for the purpose of comparison. The customs value of goods may not be determined in a substitutive manner by virtue of the provisions of paragraph 4.

§ 7. The transaction value may not be accepted as customs value, referred to in paragraph 1, where the customs authority has, for good reasons, questioned the reliability and accuracy of information or documents used for determination of customs value, which should be enclosed with a customs declaration, or where the said documents have not been supplied by a declarant.

§ 8. Prior to establishment of the customs value under Articles 25 to 29, the customs authority shall, upon a written application of the declarant, inform him of the reasons why the provisions of paragraph 7 above have been applied and fix a time limit for clarifications.

§ 9. The price actually paid or payable shall be a total payment made or to be made by the buyer to the seller for goods imported, covering all payments already made or to be made as a condition of selling the goods to the buyer, or payments already made or to be made by the buyer to a third party in order to execute obligations of the seller. The payment may be made in the form of a transfer or other direct or indirect forms of payment.

§ 10. Actions properly evidenced and undertaken by the buyer on his own account, other than those which may be added to the payment by virtue of Article 30 shall not be deemed an indirect payment to the seller, even if they could be treated as benefiting the seller or have been undertaken in consent with the seller; the cost of such actions shall not be added to the price actually paid or payable when assessing the customs value of imported goods.

Article 24. § 1. If the customs value cannot be determined under the provisions of Article 23, it shall be determined pursuant to the provisions of Articles 25 to 28 applied subsequently.

§ 2. of applying the provisions of Articles 27 and 28 may be reversed upon a written application of a declarant.

Article 25. § 1. If the customs value of imported goods cannot be determined under the provisions of Article 23, the customs value of goods shall be the transaction value of similar goods sold and exported to the customs territory of Poland at or about the same time as the goods being valued

§ 2. In order to determine the value, referred to in paragraph 1, the transaction value of identical goods in sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

§ 3. Where the costs, referred to in Article 30, paragraph 1, subparagraph 5, are included in the transaction value of goods, an adjustment shall be made to take account of significant differences in such costs between the goods being valued and identical goods arising from differences in distances and modes of transport.

§ 4. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 26. § 1. If the customs value of imported goods cannot be determined under the provisions of Article 23 and 25, the customs value of goods shall be the transaction value of similar goods sold and exported to the customs territory of Poland at or about the same time as the goods being valued

§ 2. The provisions of Article 25, paragraphs 2 to 4 shall apply accordingly.

Article 27. § 1. If the customs value of imported goods cannot be determined under the provisions of Articles 23, 25 and 26, the customs value of goods shall be the unit price of imported goods, similar or identical, sold within the customs territory of Poland in the greatest aggregate quantities and the same condition as goods for which the customs value is being determined, in transactions with unrelated persons, at the same or approximately the same time or within 90 days from the date of importation of goods, for which the customs value is determined, such price being reduced by:

- 1) commission, usually paid or agreed to be paid or the additions usually made within the customs territory of Poland, for covering profit and general expenses in connection with sale of imported goods of the same class and kind;
- 2) cost of transportation and insurance, loading and handling fees incurred in relation to transportation of goods following importation within the customs territory of Poland;
- 3) import duties or other fees collected within the customs territory of Poland by reason of the importation or sale of goods.

§ 2. If imported goods, identical or similar, are not sold within the customs territory of Poland in the same condition, at the same or approximately the same time as goods, for which the customs value is being determined, upon the application of a declarant, the customs value of goods shall be based on the unit price at which such goods, after further processing, are sold in the greatest aggregate quantity in transactions between unrelated persons, reduced by the costs of processing and the costs referred to in paragraph 1, subparagraphs 1 to 3 above.

Article 28. If the customs value of imported goods cannot be determined according to the provisions of Article 23 and Articles 25 to 27, the customs value shall be a computed value which shall consist of the sum of:

- 1) the costs or value of materials and fabrication, or value of other processing employed in producing the imported goods;
- 2) an amount for profit and general expenses equal to that usually included in sales of goods of the same class or kind as the goods being valued which are made by the producers in the country of exportation for exportation into the customs territory of Poland) costs or values referred to in Article 30, paragraph 1, subparagraph 5.

Article 29. § 1. If the customs value of goods cannot be determined under the provisions of Article 23 and Articles 25 to 28, such value shall be determined on the basis of data available within the customs territory of Poland, by the application of appropriate measures conformable with the rules and general provisions of:

- 1) Article VII of the General Agreement on Tariffs and Trade (GATT) 1994;
- 2) Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994;
- 3) provisions of this Chapter.

§ 2. The customs value of goods assessed pursuant to provisions of paragraph 1 shall not be determined on the basis of:

- 1) the selling price of goods within the customs territory of Poland, if produced in that territory;
- 2) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- 3) the price of goods on the domestic market of the country of exportation;
- 4) the costs of production other than the computed value, which has been determined for identical or similar goods on the basis of Article 28;
- 5) the prices at which the goods are sold in the country from which the goods are imported for the purpose of their importation beyond the customs territory of Poland;
- 6) minimum customs values;
- 7) arbitrary or fictitious values.

Article 30. § 1. In order to determine the customs value pursuant to provisions of Article 23, the following items shall be added to the price actually paid or due for imported goods:

- 1) costs incurred by the buyer, but not included in the price actually paid or payable for goods, of:
 - a) commissions and brokerage, except buying commission
 - b) the cost of containers which are treated as being one for customs purposes with the goods in question
 - c) the cost of packing whether for labour or materials;
- 2) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of the imported goods, to the extent that such value has not been included in the price actually paid or payable;
 - a) materials, components, parts or similar items incorporated in or belonging to the imported goods;
 - b) tools, dies, moulds and similar items used in the production of the imported goods;
 - c) materials consumed in the production of the imported goods;
 - d) engineering, development, artwork, design work, and plans and sketches undertaken beyond the customs territory of Poland and necessary for the production of the imported goods;
- 3) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable
- 4) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

5) cost of transportation and insurance of imported goods, loading and handling fees incurred in connection with transportation of goods before reaching the frontier of the Polish State or a Polish port.

§ 2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

§ 3. Without prejudice to the provisions of paragraph 1, subparagraph 3:

1) when determining the customs value of goods, the fees for the right to copy the imported goods within the customs territory of Poland shall not be added to the price actually paid or payable for these goods;

2) the fees for the right to distribute or resell imported goods, incurred by the buyer, shall not be added to the price actually paid or payable for imported goods, if the sale of goods is not conditional upon making such a payment.

Article 31. The following costs shall not be added to the customs value of goods, if they can be separated from the price actually paid or payable:

1) costs of transportation of imported goods incurred after having crossed the frontier of the territory of the Polish State or after arriving in a Polish port;

2) fees due for construction, installation, assembly works, technical service or assistance, performed after the importation of goods such as industrial plants, machines or equipment;

3) interest on a contract to finance the purchase of imported goods, concluded by the buyer, irrespective of whether the financing is provided by the seller or by another person, and whether the contract has been concluded in writing and the buyer is able to prove that:

a) the goods were sold at a price declared as the price actually paid or due;

b) the interest rate claimed does not exceed the standard interest rate level in the country for such transactions at the same time and in the country, where the financial operation was effected;

4) fees for the right to copy the imported goods within the customs territory of Poland;

5) commission on purchase of goods;

6) import duties and other fees collected within the customs territory of Poland for importation or sale of goods.

Article 32. The Council of Ministers may, by regulation, introduce a detailed procedure to determine the customs value of imported goods.

Article 33. The President of the Central Board of Customs shall publish, by the ordinance published in the Official Journal of the Republic of Poland "Monitor Polski", the explanations concerning customs value issued by competent authorities.

Article 34. For assessing the customs value, the Minister of Finance, shall determine, by regulation, the principles for applying the exchange rates of foreign currencies set by the President of the National Bank of Poland and announced by the National Bank of Poland.

REGULATION OF THE COUNCIL OF MINISTERS of December 19, 1997

on the detailed procedure of determining customs value of imported goods

According to Article 32 of the Law of January 9, 1997 - The Customs Law ["Dziennik Ustaw" - Dz.U. (Journal of Laws), No 23, item 117; No 64, item 407; No 121, item 770 and No 157, item 1026] it is regulated as follows:

Paragraph 1. In the case when the price actually paid or due, referred to in Article 23, Paragraph 1 of the Customs Law includes a separated amount of a tax due in the country of export, this amount will be deduced from the customs value if the declarant submits a document certifying exportation of the

goods confirmed by the customs administration of the country of export and submits an evidence of the tax refund.

Paragraph 2. If a sale or price of goods depends on conditions met, or performances effected, the value of which can be determined, such value shall be considered to be included in the transaction value of goods, with the stipulation that the condition or performance does not refer to:

- 1) actions mentioned in Article 23, Paragraph 10 of the Customs Law.
- 2) costs and charges mentioned in Article 30 of the Customs Law.

Paragraph 3.

1. In the case when the customs value is determined on the grounds of Article 26 of the Customs Law, a foreign person shall not be required to submit or make available any accounting documents or any other information used to determine the customs value.
2. Information coming from the producer of goods used for determining the customs value under Article 28 of the Customs Law may be verified at his consent by a customs authority in another country if the customs authority notifies the customs authorities of a foreign country sufficiently in advance.

Paragraph 4. In order to determine the customs value under Article 30, Paragraph 1.5 of the Customs Law, any costs of postal fees to which the goods sent by post to the place of destination are subjected, shall be added to the price actually paid or due for imported goods.

Paragraph 5.

1. When determining the customs value of imported carriers of information embodying data or instructions intended for data processing devices, irrespectively of provisions of Articles 23 - 31 of the Customs Law, the cost or value of the carriers of information themselves shall be exclusively taken into account on condition that the value of the carrier and software are stated separately.
2. The term used in paragraph 5.1:
 - 1) carriers of information does not denote integrated circuits, semiconductors and similar devices or goods including such circuits or devices;
 - 2) software does not include sound, film or video recordings.

Paragraph 6.

1. If the goods imported into the Polish customs territory are perishable, for the purpose of determining the value of such goods, a simplified system of determining the transaction value consisting in the use of unit prices as per average transaction value in force on the given market may be applied at the request of the person authorised to exercise customs procedures; the list of perishable goods constituting an Annexe to the present regulation.
2. The Minister of Agriculture and Food Economy shall publicise the information about unit prices of perishable goods in force on the given market not later than on Monday preceding the Friday mentioned in Paragraph 5.3.
3. Unit prices shall be obligatory invariably for a period of 14 (fourteen) days from Friday 0:00 hrs. to Thursday 24:00 hrs.
4. The unit prices shall be determined in ECU for 100 killogrammes net weight of those goods on the basis of unit prices of perishable goods as per the simplified system of determining the customs value implemented by the European Union and foreign commodity exchanges.

Paragraph 7. The customs value of perishable goods shall be determined on the basis of unit prices of perishable goods free Polish border, expressed in ECU for 100 killogrammes net weight of goods and the total weight of goods imported into the Polish customs territory.

Paragraph 8.

1. If in the delivery of perishable goods covered by the system specified in Paragraph 6.1 there are at least 5 per cent of goods unsuitable for consumption, the customs value will be determined for the part suitable for consumption after
 - 1) sorting,
 - 2) deducting the unsuitable for consumption part of goods by a standardisation inspector.
2. The goods unsuitable for consumption shall be destroyed or returned according to provisions of the Customs Law.
3. The declarant shall be obliged to perform activities specified in Paragraphs 8.1 and 8.2 at his own expense.

Paragraph 9.

1. The customs authority competent by virtue of the seat or place of residence of the applicant may issue the applicant a permit to use the simplified system of determining the transaction value with respect to all goods covered by the permit.
2. Such permit shall be issued on condition of applying the simplified system of determining the transaction value with respect to all goods covered by the permit.

Paragraph 10. The Regulation shall come into force on January 1, 1998

The Chairman of the Council of Ministers: J. Buzek

**REGULATION OF THE MINISTER OF FINANCE
of October 2, 1997
on principles of applying the rate of exchange of foreign currencies
set by the President of the Narodowy Bank Polski
and announced by the Narodowy Bank Polski
for the purpose of determining customs value**

Under Article 34 of the Law of January 9, 1997 - the Customs Law ["Dziennik Ustaw" - DZ.U. (Journal of Laws), No 23, item 117; No 64, item 407, No 121, item 770] it is regulated as follows:

Paragraph 1.

1. For determining customs value, average exchange rates of the domestic currency to convertible foreign currencies set by the President of Narodowy Bank Polski and announced by Narodowy Bank Polski on a Tuesday preceding the validity period of the rate, invariably for two weeks - from Wednesday 0:00 hrs. for two weeks up to Thursday 24:00 hrs. shall be applied.
2. If the Tuesday referred to in Paragraph 1.1 is the day statutory free of work and the rates referred to in Paragraph 1.1 are not announced, the latest average rates announced prior to the Tuesday shall be applied for determining the customs value.
3. When average rates of exchange of the national currency are changed with respect to one of the listed foreign currencies, i.e. US dollar, German mark, British pound, French frank or Swiss frank on a day other than the Tuesday referred to in Paragraph 1.1 and each Friday, by 3 per cent or more from the rate of exchange applied till that day, the applied rates shall be changed as from 0:00 hrs. on the day following the one on which they became obligatory.

Paragraph 2.

1. When transactions are settled in settlement units, average zloty rates of these units announced by the Narodowy Bank Polski on Tuesday preceding the validity period of the rate invariably for two weeks from 0:00 hrs. on Wednesday for two weeks up to 24:00 hrs. on Tuesday shall be applied for determining the customs value.
2. Provision of Paragraphs 1.2 and 1.3 shall apply respectively.

Paragraph 3. For determining the customs value of goods imported or sent by domestic or foreign persons or for these persons and having the value confirmed in documents expressed in non-convertible foreign currencies, the value in zlotys of these currencies specified in the current "List of currencies not published in the tables of Narodowy Bank Polski" shall be applied.

Paragraph 4. The Regulation shall come into force on January 1, 1998.

Minister of Finance: M.Belka

**REGULATION
OF THE PRESIDENT OF THE CENTRAL CUSTOMS OFFICE
of September 23, 1997**

Explanations concerning customs valuation

Under Article 33 of the law of January 9, 1997 – the Customs Law ["Dziennik Ustaw – Dz.U. (Journal of Laws), No 23, item 117; No 64, item 407], it is regulated as follows:

Paragraph 1. The proper organs to offer explanations concerning customs valuation are the Committee on Customs Valuation of the World Trade Organisation (WTO) and the Technical Committee on Customs Valuation of the World Customs Organisation (WCO).

Paragraph 2.

1. Explanations concerning customs valuation are decisions of the Committee on Customs Valuation of the World Trade Organisation (WTO) and the explanations of the Technical Committee on Customs Valuation of the World Customs Organisation (WCO) the list of which constitutes Annexe 1 to the present Regulation.

2. Decisions and explanations mentioned in Paragraph 1.2. constitute Annexe 2 to the present Regulation.

Paragraph 3. The Regulation comes into force on January 1, 1998.

For the President of the Central Customs Office: T. Cecelski
