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**Working Party on the
Accession of Lithuania**

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ACCESSION OF LITHUANIA

Questions and Answers

The Permanent Mission of the Republic of Lithuania has submitted the following replies to additional questions raised by Members reproduced hereunder.

Customs Valuation

Question 1.

We have reviewed our previous comments on Lithuania's Customs Valuation regime in light of additional responses to specific questions, contained in WT/ACC/LTU/48, i.e., responses 16 and 17 and comments 1-9, and Table 8 of WT/ACC/SPEC/LTU/8/Rev.7. We have also reviewed the Customs Code of the Republic of Lithuania (1996), and Resolution No. 748 on the Approval of the Procedure of the Customs Valuation of Goods, 9 June 1999.

Even after this review, there are certain provisions of the WTO Valuation Agreement which we cannot find addressed in Lithuania's legislation. In this regard, reviewing Lithuania's law and regulations has been very difficult, because the provisions of the WTO Valuation Agreement have been implemented in pieces, and in many laws and regulations, over time. While helpful, Table 8 is not explicit in all cases, and could be improved as a tool to tracking these provisions.

If in the comments below we have missed references in the Customs Code or Resolution No. 748 that address these issues, we would appreciate Lithuania's assistance in directing us to the provisions in law or regulation that implement these provisions.

Resolution No. 748, particularly in paragraphs 2.2, 2.3, 2.4, 2.5 and 55, describes the use of price lists, a database and disclosure of information contained in the database. The use of values contained in databases or price lists to actually establish customs value is strictly prohibited as set forth in Article 7 of the WTO Valuation Agreement. The text of Resolution No.748 does not support Lithuania's statement that the databases will only be a source of information for valuation specialists to determine whether Customs should conduct a more detailed examination of the imported goods.

Answer:

This particular question was answered in the reply to Question 17 (document WT/ACC/LTU/48). However, the same question is raised again. Maybe the misunderstanding permanently arises due to inaccurate translation of the Government Resolution No. 748 of 9 June 1999, where "comparative prices" were translated as "reference prices". We would like to stress again, that the comparative prices by their content and application purpose are not the same as reference prices, therefore, the use of the term "reference prices" (instead of "comparative prices") in the English translation was not appropriate perhaps. Hopefully, such correction may be could clarify

the outstanding doubts, that customs valuation database in Lithuania does not contradict to WTO Agreement on Customs Valuation. Also, we are providing additional explanations on use of comparative prices and relevant databases.

The Lithuanian Customs uses comparative prices for the purpose of the control of customs valuation of the imported goods. For valuation specialists, comparative prices can be used as a source of information as well as one of the indicators of possible commercial frauds; they indicate a need for the conduct of a more detailed examination of the imported goods or the goods to be imported. Comparative prices of the imported goods are one of the parameters of the goods customs valuation database. These prices are established on the basis of the transaction value data of identical or similar goods, imported and declared by the importers within the period of three previous months, which are classified under the same HS sub-heading. Such comparative prices are then calculated as the arithmetic mean of the transaction value data of the declared goods. Comparative prices are used only for the verification and control of the customs value of the imported goods, the verification of the actuality of the declared transaction value, and, therefore, such prices are not applied for the assessment of import duties and taxes, i.e. such prices are not applied to "actually establish customs value". The above does not contradict the provisions on application of GATT Article VII and conforms to the provisions of the recommendations of the World Customs Organizations (WCO). The Handbook of the Customs Valuation Control, issued in 1999 by the WCO, states that during customs clearance Customs has to verify whether the declared value is realistic in the light of the commercial practice and identical or similar goods. Another WCO Handbook for commercial fraud investigators states that a low or high price of goods transaction, declared by an importer, is one of the indicators of possible customs valuation frauds. Pursuant to the provisions of those WCO recommendations, the special Methodics for the Control of Customs Valuation, which provide for the application of comparative prices for the verification and control of customs value, has been approved by the Customs Department. According to this Methodics, a declared low price of imported goods in comparison to comparative prices is not a basis for the refusal to acknowledge the transaction value; however, it is just one of the indicators of possible commercial frauds among others when the customs value of the imported goods needs an additional examination, and in such cases importer must provide supplementary information and documents for the determination of customs value or its components.

By its contents the data of customs valuation database are statistics on imported goods and do not reveal the data of a specific importer or exporter. In addition, this information is used by the Customs for the purposes of customs valuation control. However, Customs authorities have no right to disclose the information that by its nature is confidential as provided by Article 8 of the Customs Code.

Comparative prices of the goods are also used to calculate the amount of the guarantee, when the declarer needs more time in order to provide some additional information and relevant documents for determining the customs value of the declared goods.

Question 2.

The provisions in Resolution No. 748 make it clear that the databases will be used to supply the customs value of imports, not just indicate a need for further investigation. In addition, as structured, reliance on this database places an incorrect presumption of doubt on every import transaction for those limited products which are the subject of the database, i.e., that the goods are presumed to be undervalued unless they match the data base values. It is a presumption that creates an unwarranted burden on importers and exporters, which can be viewed by other Members as an unacceptable market access barrier.

Answer:

Additionally to information provided in reply to Question 4 above, that comparative prices can not be used "to actually establish customs value", the Lithuanian delegation would like to emphasize, that comparative price of the goods is the calculated average of the declared transaction values of the imported goods; therefore, even theoretically Customs could not have any doubts with reference to the transaction of every single import case for as much as statistically half of the transaction values will be higher than a comparative price. Once again (as in the previous answer) we would like to stress, that a declared transaction value which is evidently low is just one of the indicators of possible commercial frauds to conduct a further verification. It is not a burden on the importers, on the contrary, the disclosing of frauds related to customs valuation just provides equal import conditions for importers and fair competition.

Question 3.

These sections, i.e. paragraphs 2.2, 2.3, 2.4, and 55 of Resolution No. 748, should be amended prior to Lithuania's accession to ensure that this situation does not occur.

Answer:

Taking into account the information provided in this document, Lithuanian delegation is convinced that there is no need for requested amendments of the aforementioned provisions of Government Resolution No. 748 (namely paragraph 2.2, paragraph 2.3, paragraph 2.4, and paragraph 55), because, in Lithuania's delegation view, they do not contradict with the WTO requirements (the detailed reasons on that are provided below). However, Lithuanian side agrees that paragraph 2.5, in which the reference to "used" cars was omitted, should be supplemented by this reference. Currently missing word "used" in paragraph 2.5 has been included into the Draft Resolution (expected time of adoption - October 2000), the translation of which is attached to this document for your review (Attachment 1).

As you also may see from the attachment, the paragraph 2.2 of Resolution No. 748 also has been included into the draft amendment with the aim of simplification of this paragraph, particularly that only "essential grounds" (that declared value of goods has been fraudulently reduced, what could be considered as a base to decide that customs value should be additionally examined) have been indicated (i.e. their number has been reduced).

Lithuanian delegation would like to draw your attention, that with the aim to improve its customs valuation system some changes of Resolution No. 748 (not related to the databases or comparative prices) are carried out. These changes are provided as a separate attachment to this document.

Additional explanations on paragraphs 2.3, 2.4, and 55 of Resolution No. 748 content (i.e. that there is no contradiction to WTO provisions).

The paragraph 55 and paragraph 2.5 are related. The essence of paragraph 55 is that the special price lists (catalogues) of the used cars approved by the Ministry of Transport can be used for the customs valuation of the used cars (only in this case), if the transaction value cannot be applied. Presently in accordance with paragraph 2.5, pending the approval of those catalogues specified in paragraph 55, for determining the customs value of the used cars, if transaction value cannot be applied, the average import prices of the used cars, established by the Competition Council, are applied. They are set taking into consideration the depreciation of the vehicles and deducting from the market price of cars the import duties and taxes paid and average general expenses and profit of the enterprises trading in used cars. This complies with the treatment of used motor vehicles by the

World Customs Organisation. Therefore, in Lithuanian delegation opinion, the special price lists (catalogues) of used cars in any way do not contradict to WTO Agreement on Customs Valuation.

As regards paragraph 2.3, it provides only, that the Customs Department shall notify the State Tax Inspectorate under the Ministry of Finance and the Tax Police Department under the Ministry of the Interior, when the further investigation by those institutions is needed, e.g. in the case of repayment of export VAT, when unreal transaction values of export goods have been declared or in the cases related to investigation of money laundering, etc.

The current provisions of paragraph 2.4 have two purposes. Firstly, when the transaction value of goods cannot be applied, for the application of other customs valuation methods, the data of the previously imported goods and the declared transaction values must be selected from the relevant Customs database. On the base of selected data the import cases, which comply with the requirements for the application of other customs valuation methods set by the Customs Code and the Order of Customs Valuation of Goods (Resolution No. 748), are determined. Secondly, when other customs valuation methods are applied for determining the customs value of imported goods, in the Customs decision should be indicated what import data have been used. This is necessary as the evidence for an importer and for the possible investigation of an appeal in the court. Such Customs decision indicates only the number of customs declaration, HS code and description of goods, exporting country, origin, quantity and unit price. This information does not reveal the data of concrete importer or exporter.

Thus, recalling the reply to Question 17 of document WT/ACC/LTU/48 and the additional information provided here, it should be emphasized once again, that in Lithuanian delegation view, there is no need to amend the paragraphs 2.2, 2.3, 2.4 and 55 of the Resolution No. 748 taking into account that the Customs valuation database is used only as a tool to find the necessary information, not "to actually establish customs value". In fact, that does not create any unacceptable market access barriers and, in our view, does not contradict to Article 7 of the WTO Valuation Agreement.

Question 4.

Please clarify the actual method of valuation contemplated by Article 37 of the Customs Code of 1996. It contains a provision on the valuation of perishable goods shipped on consignment which allows the importer to request valuation under a "simplified procedure." We are concerned that this method may not be consistent with the WTO Valuation Agreement. What is the origin of this type of valuation?

Answer:

To this particular question the answer was already provided in reply to Comment 8 (document WT/ACC/LTU/48), in which the origin of this type of valuation is clearly formulated. Moreover, it should be stressed once again, that the WTO Valuation Agreement does not restrict the usage of simplified procedure for customs valuation of perishable goods.

Question 5.

We are dismayed by Lithuania's statement in response to Question 16 of WT/ACC/LTU/48 that the "examples of customs valuation methods" included in draft "Methodics of Customs Valuation" to be approved by the Customs Department and enacted "in the near future" are "only examples and not essential." Article 14 of the WTO Customs Valuation Agreement makes it clear that the Interpretative Notes to the Agreement form an integral part of the Agreement and the Articles are to be read in connection with the Interpretative Notes. Therefore, the text of the Interpretative notes must form part of the implementing legislation and/or regulations. We agree that when the new legislation is enacted, many of our concerns

articulated at the April 14 meeting should be remedied. We request that Lithuania provide us with a copy of the "Methodics of Customs Valuation" at the earliest convenience.

Answer:

As it was indicated in Reply to Question 16 of WT/ACC/LTU/48, all the missing examples of customs valuation methods will be incorporated in the Methodics of Customs Valuation, which draft is expected to be presented to the Government for its consideration by 1 December 2000. More detailed information concerning the inclusion of missing examples is provided below in our replies.

Question 6.

Annex 1 Interpretative Notes 5.2, 5.3, 5.4, and 5.10 still appear not to be covered.

Answer:

Paragraphs 2, 3, and 4 of Notes to Article 5 are of an interpretative/example nature. Nevertheless, they will be included into the Methodics of Customs Valuation.

Paragraph 10 of Notes to Article 5 is already included into the item 21.2 of the draft amendment of the Government Resolution No. 748, attached hereto (expected time of adoption - October 2000).

Question 7.

Please clarify that paragraph 21.1 fully accepts that the term "profit and selling expenses" in the first sentence of Note 5.6 is taken as a whole.

Answer:

Paragraph 6 of Notes to Article 5 is already reflected in item 21.1 of the Government Resolution No. 748 in the following sentence: "The term "profit and general selling expenses" shall mean one of the amounts deducted from the value of goods". Following this, Lithuanian delegation cannot understand what is still unclear.

Question 8.

We could not find a provision within paragraph 21.1 of Resolution No. 748 that provides that "the 'general expense' includes the direct and indirect costs of marketing the goods in question". Can you point out where it is?

Answer:

The first sentence in item 21.1 of the Resolution No. 748 already indicates the following: "...general selling expenses (including direct and indirect marketing costs) related to".

Question 9.

Lithuania states that Note 5.8 is implemented in paragraph 21.3 of Resolution No. 748, which provides that a deduction be made for "import duties and other charges paid when goods of the same class or kind are imported into or sold in the customs territory of the Republic of Lithuania." This does not, however, appear to implement the deduction for local taxes payable by reason of the sale of the goods. Could Lithuania clarify this issue?

Answer:

In paragraph 21.3 of the Resolution No. 748 the wording "other charges" includes local taxes (VAT, excise tax), too. Nevertheless, paragraph 8 of Notes to Article 5 which reads "local taxes payable by reason of sale of goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5" has been included into draft of Methodics of Customs Valuation.

Question 10.

Table 8 states that a draft amendment of paragraph 21 of Resolution No. 748 corresponding to Article 5 of the WTO Agreement has been prepared and should be approved within the next couple of months. We would very much like to see a draft of the proposed amendment.

Answer:

The draft amendment of paragraph 21 is provided for your review in the attached draft of Government Resolution No. 748.

Question 11.

Article 8 of the WTO Valuation Agreement, concerning the additions to the price actually paid or payable in determining transaction value is not fully implemented. Annex I, Note to Article 8, paragraph 1(b)(ii), point No. 4 and Annex I, Note to Article 8, paragraph 1(b)(iii) are not implemented.

Answer:

Paragraph 1 (b)(ii) point 4 of Notes to Article 8 is of an interpretative/example nature. Nevertheless, it will be included into the Methodics of Customs Valuation.

Paragraph 1 (b)(iii) of Notes to Article 8 is not promulgated nor in the publication of World Customs Organization "Customs Valuation. WTO Agreement. Texts of the Technical Committee on Customs Valuation, July 1998", nor in the Agreement on Implementation of Article VII of the GATT 1994.

Question 12.

The references to "xiii" "xvi" and "xvii" with reference to Articles 8, 10 and 11 in Table 8 are not clear. What does Lithuania mean by these references? (Note: It would be helpful if Table 8 could be made clearer, in terms of the precise citations of paragraphs, etc., of the Customs Code and Resolution)

Answer:

The new version of Table 8, in which references to Article 8 and 11 and some other changes were made, is provided below. Also we would like to draw your attention concerning Article 10 of the Valuation Agreement: only Customs Code covers provisions of Article 10, therefore no reference is made here to the Resolution No. 748.

Table 8: Conformity of Lithuania's current provisions with the WTO Agreement
on Customs Valuation on an article by article basis

Agreement on Implementation of Article VII of the GATT 1994	The Order of Customs Valuation of Goods approved by Government Resolution No. 748 of 9 June 1999 of Lithuania (which entered into force on 1 April 2000)	The Customs Code of Lithuania (entered into force 1 January 1998)
Article 1	Section II Application of transaction value Paragraphs 4-9 conform to the paragraphs 1(a)-1(d), 2(a)-2(c) of the Article 1 of WTO Agreement	Chapter VI Value of goods for customs purposes Article 30 paragraphs 1-5 conform to the respective Article of WTO Agreement.
Article 2	Section III Application of other methods of customs valuation paragraphs 18.1-18.5 conform to paragraphs 1(b), 2 and 3 of the respective Article of WTO Agreement.	Chapter VI Value of goods for customs purposes Article 31 paragraphs 1 and 2(1) conform to paragraph 1(a) of the respective Article of WTO Agreement.
Article 3	Section III Application of other methods of customs valuation paragraphs 19.1-19.5 conform to paragraphs 1(b), 2 and 3 of the respective Article of WTO Agreement.	Chapter VI Value of goods for customs purposes Article 31 paragraphs 1 and 2(2) conform to paragraph 1(a) of the respective Article of WTO Agreement.
Article 4		Chapter VI Value of goods for customs purposes Article 31 paragraph 1 conforms to the respective Article of WTO Agreement.
Article 5	Section III. Application of other methods of customs valuation paragraphs 21-22 conform the respective Article of WTO Agreement. Note: Draft amendment of paragraph 21 of Government Resolution No. 748 has been prepared in order to make it fully conform with paragraphs 1(a) and 1(b) of the Article 5 of the WTO	Chapter VI Value of goods for customs purposes Article 31 paragraph 2(3) conforms to paragraph 1(a) of the respective Article of WTO Agreement. Paragraph 3 provides reference to the implementing provisions.
Article 6	Section III Application of other methods of customs valuation paragraph 24.1 conforms to paragraph 2 of the Article 6 of WTO Agreement.	Chapter VI Value of goods for customs purposes Article 31 paragraph 2(4) conforms to paragraph 1 of the respective Article of WTO Agreement.
Article 7	Section III Application of other methods of customs valuation paragraph 25 conforms to paragraph 1 of the Article 7 of WTO Agreement. Section V Final provisions paragraph 59 conforms to paragraph 3 of the respective Article of the WTO Agreement.	Chapter VI Value of goods for customs purposes Article 32 paragraphs 1-2 conform to paragraphs 1-2 of the respective Article of the WTO Agreement.

Agreement on Implementation of Article VII of the GATT 1994	The Order of Customs Valuation of Goods approved by Government Resolution No. 748 of 9 June 1999 of Lithuania (which entered into force on 1 April 2000)	The Customs Code of Lithuania (entered into force 1 January 1998)
Article 8	Section IV Calculation of the costs and charges which, in accordance with the transaction value method, shall be added to the price actually paid or payable for the imported goods paragraph 27 conforms to paragraph 1 (b)(ii) of the Article 8 of the WTO Agreement paragraph 28 conforms to paragraph 1 (b)(iv) of the Article 8 of the WTO Agreement paragraphs 29-37 conform to paragraph 1 (c) of the Article 8 of the WTO Agreement paragraphs 38-43 conform to paragraph 2 of the Article 8 of the WTO Agreement	Chapter VI Value of goods for customs purposes Article 33 paragraphs 1-3 conform to the respective Article of the WTO Agreement.
Article 9	Section V Final provisions Paragraphs 48-50 conform to the respective Article of the WTO Agreement.	Chapter VI Value of goods for customs purposes. The Article 36 conforms to the respective Article of WTO Agreement.
Article 10		Chapter II The rights and obligations of persons with regard to the implementation of the provisions of the Code. The Article 8 conforms to the respective Article of WTO Agreement.
Article 11	Draft amendment of paragraph 60 of the Government Resolution No. 748 (the amendment has been submitted to the Government for its consideration, expected time of approval - October 2000)	Chapter XXII Appeals Right to appeal against decisions taken by the customs authorities is provided in this Chapter. The provisions of this Chapter conform to the respective Article of the WTO Agreement.
Article 13	Government Resolution No. 748 of 9 June 1999 paragraph 2.2 conforms to the respective Article of the WTO Agreement.	Chapter XI Customs procedures Article 73 paragraph 1 conforms to the respective Article of WTO Agreement. Article 199 paragraph 2 provides reference to the implementing provisions.

Agreement on Implementation of Article VII of the GATT 1994	The Order of Customs Valuation of Goods approved by Government Resolution No. 748 of 9 June 1999 of Lithuania (which entered into force on 1 April 2000)	The Customs Code of Lithuania (entered into force 1 January 1998)
Article 15	<p>Section I General provisions paragraph 2 conforms to sub-paragraphs 1(c), 2(a), 2(b), 2(d), and paragraph 3 of the Article 15 of the WTO Agreement. Paragraph 3 conforms to sub-paragraph 2(c) of the Article 15 of the WTO Agreement.</p> <p>Section II Application of transaction value method paragraph 9 conforms to paragraph 5 of the Article 15 of the WTO Agreement.</p> <p>Section III Application of other methods of customs valuation. Paragraphs 18.4 and 19.4 conform to sub-paragraph 2(e) of the Article 15 of the WTO Agreement.</p>	<p>Chapter VI Value of goods for customs purposes Article 29. This Article conforms to sub-paragraph 1(a) of the respective Article of the WTO Agreement. Article 30 paragraph 8 includes provisions of paragraph 4 of the respective Article of WTO Agreement.</p>
Article 16	<p>Section V Final provisions paragraph 59 conforms to the respective Article of the WTO Agreement.</p>	<p>Chapter II The rights and obligations of persons with regard to the implementation of the provisions of the Code Article 4 paragraph 3 conforms to the respective Article of WTO Agreement.</p>

Question 13.

Article 7.3 of the WTO Valuation Agreement: if the "fall back method" or valuation using reasonable means is used as a final resort, provision for written notice of the final decision at the importer's request does not appear to have been implemented in paragraph 59 of Government Resolution No. 748.

Answer:

As it was already answered in Reply to Comment 2 of document WT/ACC/LTU/48, the provisions concerning written notice at the importer's request under Article 7.3 are already incorporated into paragraph 59 of the Resolution No. 748, namely in the sentence "The results of the final decision and grounds shall be communicated to the declarant in writing". Following, Lithuanian delegation cannot understand, what is still unclear.

Question 14.

Article 11 of the WTO Valuation Agreement, concerning the right of appeal. Lithuania should provide a citation of the laws that provide the right of appeal and ensure, as required by the Customs Valuation Agreement, that it is without penalty.

Answer:

Please, see Reply to Comment 4 of the document WT/ACC/LTU/48.

Moreover, draft amendment of the Resolution No. 748, attached hereto, has been supplemented also by paragraph 60, which reads "The Customs decisions made by applying this procedure shall be appealed against pursuant to the procedure set by the Customs Code".

Question 15.

Article 12 of the WTO Valuation Agreement, concerning transparency. Does the Law on the Order of Publishing and Entry into Force of Legal Acts, 6 April 1993 , provide for the transparency required by this Article? Can we have a translation of the provisions?

Answer:

The Law on the Order of Publishing and Entry into Force of Legal Acts of 6 April 1993 was submitted to WTO Secretariat in July 1999. Also see Reply to Comment 5 of the document WT/ACC/LTU/48.

Anti-dumping, Countervailing Duties and Safeguard Regimes

Question 16.

Please clarify whether “13 months” listed in Article 13 of the Law should be listed as “18 months”.

Answer:

Under the Article 11.11 of the WTO Agreement on Subsidies and Countervailing Duties “Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation”. The Article 13 of the Lithuanian Law on Countervailing Duties states that “the investigation of countervailing subsidy shall be concluded within one year. In any case the duration of investigation may not exceed 13 months”, which in Lithuanian delegation view is consistent with WTO provisions. Further, it should be emphasized, that the wording “the duration of investigation may not exceed 13 months” does not contradict with the wording of WTO Agreement “in no case more than 18 months”, taking into account that the “13 months” falls within the limits of one year and 18 months. Moreover, in Lithuanian delegation opinion, the fact that the investigation is concluded sooner than 18 months should be considered as a positive factor.

Question 17.

Please explain whether Article 14.4 provides for consultations between petitioners and respondents. If so, please explain what type of outcome is anticipated by these consultations.

Answer:

Paragraphs 13-14 of Article 14 of the Law on Countervailing Duties provide for arrangement of consultations among the interested parties during which they expect to clarify the actual situation regarding the evidences of the event of a subsidy provided by an application as well as a causal relation between subsidised import and supposed injury and also seeking to find a solution acceptable to the both parties.

Question 18.

It is not clear whether Lithuania intends to use “facts available”. Article 14.8 is not clear on this point. We would appreciate clarification on this point.

Answer:

Yes, Lithuania intends to use “facts available”, particularly the following wording of Article 14.8 of the Law on Countervailing Duties “...findings shall be based on the information and evidence received from other sources” means, in fact, “facts available”.

Question 19.

Article 45 provides that if an international agreement to which Lithuania is a party contains provisions other than those set forth in the CVD law, the provisions of the international agreement shall apply. Please clarify whether, if there is a particular conflict, the provision of the international agreement shall apply, or whether the international agreement apply to the extent that they supplement and are not in conflict with the CVD law.

Answer:

As you may see, in paragraph 26 of the Working Party Report (WT/ACC/SPEC/LTU/8/Rev.8) a hierarchy of legislative acts in Lithuania is enumerated. This clearly demonstrates, that the international agreements ratified by the Seimas (Parliament) of the Republic of Lithuania prevail over the national laws. This certainly also concerns the provisions of the Law on Countervailing Duties. Moreover, the same paragraph states “the WTO Agreement would have the status of an international treaty”. Following this, once again we would like to reiterate, that in the case when the national Law (in this particular case the Law on Countervailing Duties) will be in conflict with WTO Agreement, the provisions of the latter will be applied.

Question 20.

Article 46 suggests that Lithuania has not yet promulgated any CVD regulations. The WTO Agreement on Subsidies and Countervailing Measures requires that certain methodologies measuring the subsidy benefit are to be set forth in the Member’s countervailing duty law or regulations. Since these methodologies are not set out in the law, could Lithuania describe its plans for issuing countervailing duty regulations?

Answer:

The secondary legislation of the Law on Countervailing Duties currently is under preparation (expected time of adoption November 2000/February 2001). Moreover, Lithuanian delegation would like to assure that the Law on Countervailing Duties shall not be applied before the adoption of aforementioned secondary legislation.

Trade-Related Intellectual Property Regime

Question 21.

Lithuania describes the provisions in Article 72 of their Copyright Law governing the transitional period that provides retroactive protection for preexisting works. Paragraph 2 of that provisions, however, specifies that "Any acts done before the entry into force of this Law and not infringing the provisions of the relevant legislation in force at that time shall not constitute an infringement of rights and shall not give rise to the right to obtain remuneration granted under this Law."

As noted in our earlier comments, the right of retroactive copyright protection is a major issue for this delegation. To be consistent with the WTO Agreement on TRIPS in this matter, Article 72(2) of Lithuania’s law can excuse past conduct (i.e., as a “grandfathering” provision), but

cannot excuse similar future conduct. It should be clear in the text of such provisions that while infringements that occurred prior to the entry into force of the new law will not subject a user to liability, new acts of conduct after the entry into force do incur liability, even if they are the same acts as those that were previously non-actionable and on the same works, or related to unauthorized copies that have already been produced.

For example, while Article 72(2) might excuse past reproduction of a phonogram which would have otherwise been in violation of the performers' right to control reproduction under Article 44(1)(3), it does not excuse future distribution of the unauthorized copies after the Law and Lithuania's WTO obligations come into effect, as this would violate Article 44(1)(5). Lithuania's law does not appear to make that clear.

We seek clarification of this point in the Working Party report text, i.e., to confirm that the protection against infringement in future acts provided by the WTO Agreement on TRIPS is conferred, and to confirm that Article 72(2) does not excuse conduct that, while not in conflict with Lithuania's obligations prior to passage to the law, would now conflict with the Law and Lithuania's WTO obligations.

Answer:

The aim of Article 72.2 of the Law on Copyright and Related Rights is to excuse past conduct only, not the future conduct done after the entry into force of the new Copyright Law. All actions which are done after the new Copyright Law takes effect are subject to its regulation. Thus, in Lithuanian delegation view, Article 72.2 of the Law on Copyright and Related rights is in compliance with the WTO Agreement on TRIPS since only past actions which were not in conflict with the Copyright Law in force at that time (i.e. Law on Copyright and related rights of 17 May 1994 as an Amendment and Supplement to the Civil Code) do not subject a user to liability.

Question 22.

Lithuania has stated that *ex parte* searches are provided for in the Copyright Law, but neither Article 69, nor any other part of the Lithuanian Copyright Law that we can identify, expressly provides for *ex parte* searches. In addition, no mention is made in that law of *ex parte* orders. Rather, Lithuania states that Article 160 of the Civil Code provides this protection.

Please provide the text of Article 160 of the Civil Code, which Lithuania indicates provides this mechanism. Please elaborate on the requirements and evidentiary showing required to get such relief under their Civil Code. We seek appropriate legal amendment of Article 69 to make express reference to these provisions of the Civil Code, e.g., under Article 69(2), a new subsection (4) could be added as follows:

"any provisional measures permitted by the Civil Code,
including but not limited to, Article 160 thereof. "

We seek clarification in the Working Party report language that it is Lithuania's intent to make this legal amendment prior to its WTO accession.

Answer:

After examination of your comment (above), Lithuanian delegation realized, that your previous question concerning *ex parte* actions was most probably misunderstood. Therefore, Lithuanian delegation is providing revised answer to your question 8: "Article 69 of the Copyright Law does not appear to expressly provide for *ex parte* actions. Could Lithuania clarify this apparent oversight".

In Lithuania's opinion, the Article 69 of the Copyright Law expressly provides for *ex parte* actions, namely Article 69.1 foresees the provisional measures, which can be applied by the court in urgent cases with the presence of sufficient evidence about the infringement of copyright or related rights upon receiving a claim application of an owner of copyright or related rights; and the Article 69.2 states, that *ex parte* actions may be taken where essential irreparable damage may be caused to the owner of copyright or related rights, or where the evidence may be destroyed as it is provided in Article 50.2. of the TRIPS Agreement.

Additionally Lithuanian delegation would like to emphasize, that the Article 160 of the Code of Civil Procedure (not the Civil Code) stating that "the application concerning the claim should be settled by judge or court not later than the next day after receiving the application without informing defendant or other parties participating in the case" does not provide for the types of court injunctions (or provisional measures). It stipulates only the order how the claim concerning the application of court injunctions (we call them "claim safeguarding measures") must be judged (i.e. it must be judged without the defendant being heard).

Therefore, taking into account aforementioned information, in Lithuania's view, it is evident, that there is no necessity to amend the Article 69 of the Copyright Law with the aim to make reference to the provisions of the Civil Procedure Code.

Further, as you may see, the Article 69 of the Law on Copyright and Related Rights provides for a non-exclusive list of *ex-parte* provisional measures, i.e. the judiciary has a possibility to apply other measures not included in the list as the Article 69.4 provides that other similar measures could be applied. Moreover, the Article 69.3 provides for the seizure of infringing copies of works, fixations of audiovisual works or phonograms, as well as technical devices and equipment used for reproduction thereof, and appropriate documents. The seizure action should be interpreted more broadly, i.e. including also a search action, taking into account that such term as "search" is not used in any civil proceedings in Lithuania. In general, under our legislation the seizure action is conducted together with a search action, e.g. having the court order of seizure a bailiff has the right to enter into and search the premises, and seize the infringing copies of works or objects of related rights.

Question 23.

We remain concerned that the exception provided for in Lithuania's Copyright Law for exploitations "solely for the purposes of education, teaching and scientific research" is much broader than that provided for in Article 13 of the WTO Agreement on TRIPS.

Even though the language of Lithuania's Law is in the Rome Convention, that provision (i.e., in the Convention) applies to a small subset of the works covered by TRIPS obligations. Article 49(1)(3) of the Lithuanian law applies to all related rights, so while it is technically consistent with Article 15 of the Rome Convention, that is not the relevant point. Exceptions for all copyrighted works, as provided for in Article 49(1)(3) of Lithuania's Law, must conform to TRIPS Art 13, which is far narrower than the Lithuanian provision. Article 49(2) of the Lithuanian law tracks TRIPS Article 13 in saying that the 49(1) exceptions "must not conflict with a normal exploitation of the objects of these rights and must not unreasonably prejudice . . .", but there is no explicit limitation.

For example, under Article 49(1) (3), Lithuania's law could be interpreted to permit "distance learning" video tapes prepared to teach English as a second language to be freely copied and played in Lithuanian schools and community centers without authorization and without remuneration because it would be exploitation "solely for the purposes of education . . .". As this activity would badly damage the Lithuanian market for these videotapes, it would be an Article 13 violation.

We seek appropriate legal amendment or clarification of Lithuania's Copyright Law to ensure the full implementation of Article 13 of the WTO Agreement on TRIPS. We also seek additional language in the Working Party report confirming that Article 49(2) of the Lithuanian law is intended to implement TRIPS Article 13 in saying that the 49(1) exceptions "must not conflict with a normal exploitation of the objects of these rights and must not unreasonably prejudice . . . " .

Answer:

In Lithuanian delegation opinion, the Article 49 of the Copyright Law does not contradict with Article 13 of the WTO TRIPS Agreement. The exceptions provided for in Article 49.1.3 of the Law must be interpreted in the light of Article 49.2. The exceptions cannot be broadly interpreted as Article 49.2. stipulates for its limits, i.e. it shall be permitted, without the authorization of the owner of related rights and without the payment of remuneration, to use a performance, phonogram, fixation of an audiovisual work (film) and a broadcast or programme of a broadcasting organisation, or the fixations thereof, for exploitation solely for the purpose of education, teaching and scientific research, but only if said limitations is not in conflict with a normal exploitation of the objects of these rights and must not unreasonably prejudice the legitimate interests of performers, producers of phonograms, producers of the first fixation of an audiovisual work or broadcasting organisations.

Thus, Lithuanian delegation is convinced, that Article 49.2 of the Copyright Law implements Article 13 of the WTO Agreement on TRIPS.

Attachment 1

Draft

GOVERNMENT OF THE REPUBLIC OF LITHUANIA

RESOLUTION

No.....2000

Vilnius

ON PARTIAL AMENDMENT TO RESOLUTION No.748 “ON THE APPROVAL OF THE PROCEDURE FOR THE CUSTOMS VALUATION OF GOODS” ADOPTED BY THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON 9 JUNE 1999

The Government of the Republic of Lithuania resolves:

Partly amending the Resolution No. 748 “On the Approval of the Procedure for the Customs Valuation of Goods” adopted by the Government of the Republic of Lithuania on 9 June 1999 (Records, 1999, No. 52-1686):

1. to outline paragraph 2.1. as follows:

“2.1. in determining the customs value of goods, the transaction value of identical or similar goods, the customs value of which is additionally verified, shall not be taken into consideration (including the cases when these values are verified on fulfilling the controls of importer’s economic and commercial activity, his accounting, financial accountability with respect to the customs procedures carried out by him);”

2. to outline par. 2.2 as follows:

“2.2. if there are grounds to doubt that the declared customs value of goods has been fraudulently reduced (the declared transaction value is low in comparison with the comparative prices of import goods fixed by the Customs Department under the Ministry of Finance and (or) transaction values of identical or similar goods, the buyers and (or) sellers of the goods are natural persons, the goods have been purchased from an off-shore company, no transport or insurance costs or other necessary particulars have been indicated in the documents, the particulars of the different documents are not consistent, the documents bear corrections) and the declarant does not submit information grounding the correctness of the declared transaction value, the customs authorities shall decide that the customs value should be additionally examined or, following par. 59 of the Procedure for the Customs Valuation of Goods, approved by this Resolution, shall determine the customs value of goods without additional examination. When the customs value of goods have to be examined additionally, the goods are released for free circulation only after the declarant provides a guarantee equivalent to the biggest amount, fixed by the customs, of the customs debt which may occur;”

3. to outline paragraph 2.5 as follows:

“2.5. pending the approval of the catalogues of the prices of used cars specified in paragraph 55 of the Order of the Customs Valuation of Goods and introduction of instructions on their use for the purpose

of customs valuation, the average import prices on imported used cars established by the Competition Council shall be used instead, taking into consideration the depreciation of the vehicles;”

4. to outline paragraph 3 as follows:

“3. To instruct:

3.1. the Department of Statistics under the Government of the Republic of Lithuania in accordance with a procedure approved by the Customs Department under the Ministry of Finance to provide data to the aforesaid Department on the gross profit margin of economic entities according to the types of the Register of Types of Economic activities;

3.2. the Ministry of Transport in accordance with a procedure approved by the Customs Department under the Ministry of Finance to provide data to the aforesaid Department on the transport tariffs of carriage of cargoes by land, air and sea transport.”

5. Partly amending the Procedure for the Customs Valuation of Goods approved by the said Resolution:

5.1. to outline paragraph 21 as follows:

“21. If the imported identical or similar goods are sold in the customs territory of the Republic of Lithuania in an unaltered state, on application of Article 31 (2)(3) (deductive method), the following values referred to in this sub-paragraph shall serve as a basis:

21.1. the unit value of the goods, sold at or about the same time when the goods being valued were imported, from which the following costs shall be deducted:

21.1.1. the commission usually paid or due according to the agreement, or the profit and general expenses (including direct and indirect marketing costs) related to sales of goods of the same class and kind in the customs territory of the Republic of Lithuania. The term “profit and general expenses” shall mean one of the amounts deducted from the value of goods. Such deducted costs are to be determined on the basis of information supplied by the declarant unless his figures are inconsistent with those obtained in sales in the Republic of Lithuania of goods of the same class or kind as the goods being valued. If the figures supplied by the declarant do not comply with those obtained, the amount for profit and general expenses shall be based upon the relevant information (statistical data or other data possessed by the customs) supplied not by the declarant. When the amount of the commission or the usual profit or general expenses is determined in accordance with the provisions of this subparagraph, the decision whether certain goods are of the same class or kind as other goods must be taken on a case-by-case basis taking into account the circumstances involved. Sales of the narrowest range of goods, which includes the goods being valued and certain other goods, for which the necessary information can be provided should be examined. For the purpose of this subparagraph, goods of the same class or kind must be imported from the same country as the goods being valued, or from any other country;

21.1.2. the usual costs of transport and insurance, loading costs and costs related to them which have been incurred in the customs territory of the Republic of Lithuania if they have not been included in the general selling expenses;

21.1.3. import duties and other charges paid when goods of the same class or kind are imported into or sold in the customs territory of the Republic of Lithuania.

21.2. the unit value of the goods, sold at the earliest date after the importation of goods being valued (not exceeding the fixed period of 90 days), if neither imported, nor identical or similar goods were sold at or about the same time when the goods being valued were imported. The „earliest day“ mentioned in this paragraph shall be considered the day by which sales of imported goods or identical or similar goods are made in sufficient quantity to establish the unit price.

On application of this paragraph, the costs indicated in subparagraphs 21.1.1.-21.1.3 shall also be deducted from the unit price of the goods.”,

5.2. to outline paragraph 51 as follows:

“51. The customs value of goods and its elements shall be declared by producing the declaration of customs value of goods. The form and manner of completion of this declaration shall be

determined by the Customs Department under the Ministry of Finance. The declaration of the customs value of goods shall be furnished together with the customs declaration (Single Administrative Document) upon placing the goods under the release for free circulation customs procedure, including release for free circulation (re-import) of compensating products produced from the goods temporarily exported for processing. It shall not be mandatory to lodge the declaration on the customs value if:

51.1. the customs value of the consignment of goods does not exceed 3000 litas, unless several consignments of goods are imported under the same contract;

51.2. where the goods are imported which are not used for commercial or production purposes (for example, charity or humanitarian aid consignments, the property of the persons who change the place of residence or the inherited property etc);

51.3. the goods are imported which are not subject to any import duties and taxes;

51.4. in cases provided for in paragraph 2 of Article 37 of the Customs Code, the customs value of goods shall be determined in a simplified way laid down by the Government of the Republic of Lithuania or any institution authorised by it.

5.3. to supplement the procedure by paragraph 60:

“60. The Customs decisions made by applying this procedure shall be appealed against pursuant to the procedure set by the Customs Code”.

Prime Minister

Minister of Finance
