

**NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLE 18.5 OF THE AGREEMENT**

Replies to the Questions posed by MEXICO<sup>1</sup>  
Regarding the Notification of LITHUANIA<sup>2</sup>

**Q1. Articles 2.7 and 2.8: The meaning of the expression "price payable" needs to be clarified and illustrated given that the normal value and export price should be determined on transactions made during the period under investigation.**

Reply

Articles 2.7 and 2.8 of the Anti-dumping Law of the Republic of Lithuania ("the AD Law") make references to Article 4 and 5, accordingly, providing for a definition of the normal value and export price.

Article 4.10 of the AD Law clarifies that all contracts concluded by the exporter with all domestic purchasers of the product in question during the period of investigation shall be examined to determine the normal value.

Moreover, Article 5.3 of the AD Law clarifies that in order to determine the export price, all export transactions made by the exporter of the product in question with all purchasers during the period of investigation or those of the transactions which are representative of adequate volume of export sales shall be investigated, including export transactions from the exporting country into the customs territory of the Republic of Lithuania via the third countries. Thus, in order to determine the normal value and export price of the product in question, not only the amounts already paid, but also the amounts payable for the products, sold during the period of investigation, shall be included in.

**Q2. Article 2.17: Could the definition of an importer as a natural or legal person who "has concluded any other contract for the supply of such product" be interpreted as including a natural or legal person who has not made any imports, but who could do so under a supply contract? Could Lithuania clarify what is meant by "has concluded any other contract for the supply of such product"?**

Reply

The definition an importer shall mean a natural or legal person who has not only imported the products by supplying the import declaration for formalizing the procedure of the release of the product in question into free circulation or on behalf of which the aforementioned declaration is being

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<sup>1</sup> G/ADP/Q1/LTU/3-G/SCM/Q1/LTU/3

<sup>2</sup> G/ADP/N/1/LTU/1

supplied but also a natural or legal person who concluded a contract, under which the products shall be imported into the customs territory of the Republic of Lithuania.

Referring to the second part of the question "has concluded any other contract for the supply of such product" shall mean the transaction under which the products are transferred while importing those products into the customs territory of the Republic of Lithuania.

**Q3. Article 4.1: What are implications of there being two different times at which a normal value may be established? Does it follow that these two normal values can be the same, or must they differ?**

Reply

In the first case, the normal value shall be preliminarily established by the Institution on the basis of which the preliminary margin of dumping shall be established, based whereon the amount of the provisional anti-dumping duty is calculated.

In the second case, the definitive normal value shall be determined on the basis of investigation results and shall be used for calculation of the definitive anti-dumping duty. Preliminarily determined normal value may differ from the definitive normal value, if supplementary data or evidence is provided in the course of investigation, allowing the adjustment of the preliminary normal value.

**Q4. Article 4.4: Are the criteria of the constructed value and export price to a third country when there are no sales of the like product in the ordinary course of trade applied successively and exclusively?**

Reply

Where there are no sales of the product in question in the ordinary course of trade in the domestic market of the exporting country, the investigation authority (in this case Ministry of Economy, hereinafter – *Institution*), in establishing the normal value of the product in question, can choose one of the alternative methods, provided for in Article 4.4 of the AD Law, i.e. (i) the constructed value or (ii) the export price to an appropriate third country. There is no hierarchy between these two methods. The AD Law does not provide for any other methods applied for establishment of the normal value in the aforementioned circumstances.

**Q5. Articles 4.6 and 4.7: Article 2.3 of the Anti-Dumping Agreement provides for cases of "association or a compensatory arrangement between the exporter and the importer or a third party" for the purpose of calculating the export price. On what grounds does Lithuania intend to apply these concepts for calculating the normal value? Could they be interpreted as options additional to those set forth in the Anti-Dumping Agreement for the purpose of calculating the normal value?**

Reply

Article 4.6 of the AD Law provides for that prices of the product in question paid between natural and legal persons who appear to be associated or to have a compensatory arrangement with each other, where this directly or indirectly affects the prices of the products, shall not be considered as prices in the ordinary course of trade. This provision does not mean that the normal value cannot be established on the basis of prices of the products in question in the domestic market of the exporting country.

If it is established that the quantities of remaining sales of the product in question (i.e. sales of the product in question in the ordinary course of trade) are sufficient, pursuant to the requirements provided for in Article 4.5 of the AD Law, then prices of the product in question paid between natural and legal persons who appear to be associated or to have a compensatory arrangement with each other, shall simply be disregarded for the purpose of establishing the normal value.

Only if it is established that there are no or insufficient remaining sales of the product in question in the ordinary course of trade in the domestic market of the exporting country, then one of the methods, provided for in Articles 4.3 and 4.4 of the AD Law, shall be chosen (i.e. the normal value shall be determined on the basis of prices in the domestic markets of other producers or sellers of the like product in the exporting country; on the basis of the cost of production in the country of origin plus a reasonable amount for selling, administrative and general costs, as well as for reasonable profits or on the basis of the export price, in the ordinary course of trade, to an appropriate third country). The established methods for determination of the normal value provided for in Articles 4.3 and 4.4 of the AD Law are in compliance with the methods established in Article 2.1 and 2.2 of the Anti-dumping Agreement. The AD Law stipulates no additional options to those set forth in the Anti-Dumping Agreement.

**Q6. Article 4.19: The matter of the notification of interested parties of the selection of the third country prompts the following questions:**

**When and how are the parties notified of the decision to conduct the anti-dumping investigation?**

Reply

Having made a decision to initiate the investigation, the Institution shall publish a notice thereof in the Information Supplement to “Valstybes žinios” (Official Gazette) and notify in writing the known interested parties of its decision and of the selection of the third country. However, the Institution practices to inform the parties about the selected third country already in the decision to initiate the investigation.

**Where and how is the effective date of this decision determined?**

Reply

The Institution’s decision to conduct the investigation shall be formalized by the order of the Minister of Economy, which, pursuant to the Government’s Procedure Manual, shall enter into force as of the date of its adoption (signing), unless the later enforcement date is established thereof.

**How does Lithuania apply the meaning of "shortly", that is to say, within what time-limit?**

Reply

This concept is the matter of interpretation. It is not clarified in the AD Law, therefore, it should be interpreted with regard to the Court’s interpretation, in case of examination of the relevant complaint (in case such complaint emerges), i.e. following the criteria of justice and common sense.

According to the above, we think that the phrase “shortly” should mean the reasonable time limit required for performing notification (i.e. writing, registration of the notice, etc.).

In case of objective interruptions (for instance, force majeure), the aforementioned time limit would extend respectively in such circumstances.

**Could the Lithuanian authority give an example of such a case?**

Reply

The Institution has not initiated any new dumping investigation since 1 April 2002, i.e., as of the enforcement date of the revised version of the Anti-Dumping Law, the notification of which is being carried out.

**Q7. Article 4.20: Why is there no notification similar to that provided for in Article 4.19 of the selection of a third country other than the one selected for the initial investigation?**

Reply

Article 4.20 of the AD Law provides for an option to replace the third country selected for imposing the provisional anti-dumping duty by another country and, having made calculations on the basis of the data relating to the latter, submit a proposal to the Government to impose the definitive anti-dumping duty.

The notification of the interested parties in this case is provided for in Article 40 AD Law: the interested parties may request provision of detailed information relating to the basic facts and the motives, on the basis whereof the definitive anti-dumping duty is intended to be imposed, no later than within one month from the effective date of the resolution to impose the provisional duty. The requested information must be presented in writing within one month before the submission of the draft resolution to impose the anti-dumping duty. Received the requested information, the interested parties may make their views and opinions known, these, however, shall be taken into account only if received within a time period of 10 calendar days set by the Institution.

**Q8. Article 4.22: Is public notice given of the determination of whether producer operates under market economy conditions? Could Lithuania clarify what the phrase “having given the interested parties an opportunity to comment” refers to and when the parties are given such an opportunity?**

Reply

According to the last statement of Article 4.19 of the AD Law “the interested parties shall be notified of the selection of the third country shortly after the entry into force of the decision to conduct the anti-dumping investigation and shall be given 10 calendar days to comment on the selection of the country”. However, as stated above, the Institution practices to inform the parties about the selected third country already in the decision to initiate the investigation. Thus, pursuant to Article 39.3 (7) of the AD Law upon establishing the time limit given for the interested parties to submit their comments, the time limit is set for the exporters within which they must provide their opinion regarding their assigning to the exporters of the countries of non-market economies and present documents, certifying that the product in question shall be manufactured and sold by them in the market economy conditions.

No separate notification regarding the Institution’s decision made concerning whether the concrete exporter operates in the market economy conditions or not, shall be published. However, there is the opinion that in case of the adoption of such a decision, regardless it is positive or negative,

the concrete exporter, whose data have been examined, shall be notified individually. The latter decisions shall be published in the decisions of the Institution and the proposals submitted to the Government specified in Article 39.2 of the AD Law.

**Q9. Article 8.7 (2) On what grounds does Lithuania consider that 80 per cent of domestic production of the like product is sufficient to comply with the final part of Article 4.1 (ii) of the Anti- Dumping Agreement, which states that injury must be being caused to almost all domestic production?**

Reply

Such uncertainties are not applicable in legal practice of Lithuania, therefore, aiming at avoidance of disputes between the parties, the phrase “almost all domestic production”, being used in the AD Agreement, in the AD Law of the Republic of Lithuania is made more concrete and expressed in percentage, i.e. no less than 80 per cent.

**Q10. Article 12.1: What is the time-limit set by the Institution for the applicant to rectify the shortcomings in its application? If it is established on a case-by-case basis, what are the criteria forming the basis for the decision?**

Reply

The time limit set by Institution for the applicant to rectify the shortcomings in its application is not less than 10 calendar days. It is fixed in Article 40.6 of the AD Law. The term "10 calendar days" should be changed into "not less than 10 calendar days" as this should be the correct translation from Lithuanian.

**Q11. Article 13.1: Do the 45 calendar days from the receipt of application for making the decision on whether or not to initiate the investigation include the time limit referred to in the above question?**

Reply

Yes.

**Q12. Article 16.3 (1): What types of contracts are being referred to with regard to limiting the examination in the investigation? Please explain how such contracts would be considered for the purpose of limiting the examination.**

Reply

Sampling of transaction could be used in cases where there is a large number of exporters or importers. However, it would be a particularly rare case for Lithuania, when such sampling could be applied.

The sampling, in case where is a large number of transactions, could be acceptable if the co-operating parties concerned have given their agreement to such an approach.

It should be noted that the sampling of transactions would also cover sampling with regard to product types or producers at the same time.

**Q13. Article 16.4: Is this a three-week time-limit for the interested parties to make their information available or for the Institution to choose the sample once such information has been submitted?**

Reply

A three-week time limit is fixed for the interested parties to make their information available.

**Q14. Article 18.2: Does Lithuania consider it appropriate to initiate an investigation into a like product when the imports thereof are already subject to provisional or definitive anti-dumping duties? On what grounds?**

Reply

Several investigations may be conducted simultaneously with respect to the same product in question in order to remove injury caused to the domestic industry, however, the paragraph thereof establishes that only one measure may be applied to the same product in question at the same time.

**Q15. Article 36.2: Do the imposed anti-dumping duties cease to be considered circumvented if any of the conditions in either paragraph 1 or paragraph 2 are not met?**

Reply

Article 36.2 of the AD Law thereof establishes that the imposed anti-dumping duty shall be considered circumvented if all the conditions provided for in subparagraph 1, 2 and 3 of this Article are met.

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