



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE AND ECONOMIC  
SECURITY

Directorate G – Trade Defence  
Investigations IV. Relations with Third Countries for Trade Defence  
Matters

**NON CONFIDENTIAL**

Brussels, 7 October 2025

**ANTI-DUMPING INVESTIGATION BY THE UNITED KINGDOM ON IMPORTS OF CERTAIN ENGINE  
OILS AND HYDRAULIC FLUIDS FROM LITHUANIA AND THE UAE**

**Submission of the European Commission – Statement of Essential Facts**

The European Commission ('the Commission') would like to thank the UK Trade Remedies Authority ('TRA') for the opportunity to submit comments in the framework of the above-mentioned proceeding.

Following the publication of the Statement of Essential Facts ('SEF') on 22 September, the Commission would like to raise the following concerns.

**1. DUMPING**

The Commission has no access to the calculations made by the TRA. Therefore, it is not able to make thorough comments on calculations. It is striking however that the duty amount for the Lithuanian exporter increases significantly from 11,60% in the provisional determination to 84,72% in the SEF.

It appears that the TRA has not taken into account the cost information submitted by UAB STC (Lithuania). To establish the **normal value**, the TRA has used the **UK costs of production** instead, including base oil costs, with adjustments applied to energy and labour costs.

The verified data from the UK producers was used, according to the SEF, because "the co-operating Lithuanian exporter, UAB STC, provided a questionnaire response that did not include its costs of production"<sup>1</sup>.

It seems however, as reported to the Commission, that the exporter was not able to submit data on the cost of production according to the specifications of the excel sheet prepared by the TRA. The exporter provided instead other data and documents containing information on the cost of production that could have been verified during the verification visit. Following the

---

<sup>1</sup> SEF Engine oils. Para. 136

verification visit, the exporter reportedly replied to all further requests by the TRA, who did not raise any additional questions regarding costs before the PAD was public.

In this regard, we would like to recall that paragraph 5 of the Annex II of the WTO Anti-dumping Agreement ('ADA'), notes the following: *“Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.”* Furthermore, paragraph 3 provides: [...] *“If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.”*

In addition, the exporter claims that it was not informed that the information supplied on costs would not be accepted. However, paragraph 6 of the above-mentioned Annex provides *“If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation.”*

In reply to the SEF, UAB STC is apparently submitting an additional document concerning costs of production, which should be considered by the TRA, if time-limits allow.

## **2. INJURY DETERMINATION**

### ***a) Cumulation of Lithuanian and UAE imports***

Lithuania's volume of exports to the UK represents a share of 3,11% of total exports. Therefore, according to Article 3.3 of the WTO ADA, since this share is above 3% and the margin of dumping is more than *de minimis*, the effect of Lithuania's exports can be assessed cumulatively with those of the UAE.

At provisional stage the Commission requested the TRA to refine the quantification of imports since imports of goods that were not in the scope of this investigation were included in the assessment and which could result in Lithuanian exports to fall below the de-minimis level.

In this context, as a response to the SEF, the Lithuanian exporter has informed the TRA that there are apparently some volumes exported from Lithuania by UAB STC to the UK that are immediately exported to Ireland. The company has provided relevant supporting information to that end. The Commission requests the TRA to have a close look to this information and decumulate imports from both countries if found appropriate.

Finally, the arguments provided in the SEF regarding the non-inclusion of Lithuania (only the UAE) in the support letter from the UK lubricant's association are not convincing. This confirms that Lithuania may not be representing any threat to the UK industry and that there are reasons to decumulate.

Therefore, the TRA is requested to **re-assess the import volumes from Lithuania** taking into account all information provided by the parties, which will most likely lead to the **exclusion of these imports from the scope of the investigation.**

### ***b) Definition of the domestic industry***

It is recalled that the **domestic industry** is defined in Article 4.1 of the WTO ADA: “*For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products [...]*”

Therefore, the injury analysis needs to be conducted on the basis of data referring to the domestic industry as a whole.

However, the injury to the domestic industry is assessed based on sampled questionnaire replies of two sampled producers (Aztec Oils Ltd. And Paterson Enterprises Ltd.) representing only 15% of UK production. As a result, and for the reasons explained below, **the representativeness of the whole industry is put into question**. The fact that 2 other selected producers did not submit any reply to the questionnaire may also raise doubts about the support of the domestic industry of this investigation.

Moreover, in certain instances, the information provided by the two respondents in the questionnaire replies was contradictory. For example, one company increased profits and the other reduced profits during the period analysed. This was the case for several injury indicators.

In addition, for a number of injury indicators, information was provided by the respondents but the TRA did not aggregate the available data for the whole domestic industry. Therefore, the information was inconclusive. This concerned almost half of the indicators.

**The separate analysis of diverging developments of injury indicators for two sampled companies, whose representativeness is questionable** (as further explained below), **is completely inadequate to demonstrate material injury to a domestic industry in terms of Article 3 of the WTO ADA.**

Therefore, it cannot be considered that the injury analysis is based on the situation of the **domestic industry as a whole** as provided for in Article 4.1 of the WTO ADA.

### ***c) Injury analysis***

In this context, according to Article 3.1 of the WTO ADA, “*A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.*” (emphasis added).

In *US – Hot-Rolled Steel*, the Appellate Body considered that “*The term ‘objective examination’ aims at a different aspect of the investigating authorities’ determination. While the term ‘positive evidence’ focuses on the facts underpinning and justifying the injury determination, the term ‘objective examination’ is concerned with the investigative process itself.*”

With regard to the principles governing the process of the selection of a sample for purposes of an injury determination, the Panel in *EC – Salmon (Norway)*, para 7.130 stated:

*"We do consider that the AD Agreement establishes some general parameters for the use of sampling in the injury context. Thus, in our view, the obligation in Article 3.1 that a determination of injury be based on 'positive evidence' and involve an 'objective examination' of the volume, price effects, and impact of dumped imports, limits an investigating authority's discretion both in choosing a sample to be examined in the context of injury, and in collecting and evaluating information obtained from the sampled producers. The Appellate Body stated, in US – Hot-Rolled Steel, that 'an 'objective examination' [under Article 3.1] requires that the domestic industry, and the effects of dumped imports, be investigated in an unbiased manner, without favoring the interests of any interested party, or group of interested parties, in the investigation.' A sample that is not sufficiently representative of the domestic industry as a whole is not likely to allow for such an unbiased investigation, and therefore may well result in a determination on the question of injury that is not consistent with the requirements of Article 3.1 of the AD Agreement."(emphasis added)*

The issue of insufficient evidence has been problematic since the initiation of this investigation. The Commission has raised this issue in writing already at provisional stage and also in a hearing. Due to the poor quality of the evidence, it cannot be considered that an **objective examination** in terms of Article 3.1 has been made.

Unfortunately, the SEF shows little improvement in relation to the quality of evidence of injury. Therefore, the Commission would like to reiterate that **the injury analysis is inadequate and incomplete as it is based on extremely poor evidence** provided by the respondents. Most evidence is either contradictory to a finding of injury, incomplete or inconclusive. In any case, clearly not sufficient for a finding on material injury as per Article 3 of the WTO ADA.

It is also important to recall that WTO jurisprudence confirmed that each of the fifteen factors listed in Article 3.4 of the WTO ADA be evaluated by the investigating authorities, when examining the impact of the dumped imports on the domestic industry concerned. This is far from being the case.

In this regard, the Panel Report, EU – Footwear (China), para. 7.427 recalled that “*Clearly, the investigating authority must 'evaluate' all relevant economic factors, and to do so, it must have information pertaining to those factors*”.

**It is therefore not possible with the evidence available to conduct an objective examination.** In addition to the shortcomings listed above, these are some more examples of the deficiencies in the data used by the TRA:

- The quality of the questionnaire replies was largely deficient, as a significant amount of data was not provided adequately by the respondents. For instance, on certain indicators, the sampled companies did simply not provide data or provided it without non-confidential summaries. This affects more than half of the injury factors to be assessed.
- With some exceptions, the injury indicators were not provided for the whole injury investigation period, which results in a biased injury analysis.

As a result, for most of the injury indicators it was **not possible for interested parties to have a clear picture** of the domestic industry’s situation during the investigation period and for the product concerned. This significantly impairs also a demonstration of causation.

Nevertheless, the TRA, found injury in a total of 10 injury indicators even though, for some of them, the respondents did not even provide a proper reply to the questionnaire.

**An analysis on this basis cannot be considered as based on positive evidence and involve an objective examination as provided for in Article 3.1 of the WTO ADA, and it is not possible to conclude that the UK domestic industry is suffering material injury in terms of Article 3 of the WTO ADA.**

### **3. THE CAUSALITY ANALYSIS IS DEFICIENT**

Article 3.5 of the WTO ADA provides that an investigating authority must demonstrate that the dumped imports are, through the effects of dumping causing material injury. In addition, the WTO ADA requires that *“The demonstration of a **causal relationship** between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.”* (emphasis added)

TRA’s conclusion on causality is that *“There is a timely coincidence between the occurrence of that injury and the imports of the goods concerned that establishes causation. There are no other factors, known by the TRA, that affect causation.”*<sup>2</sup>

However, even if imports of the goods concerned increase in the last two years of the injury investigation period (2022-2023 and 2023-2024), **based on the data disclosed in the SEF, it is difficult to establish a correlation between the volume of imports of the goods concerned and any alleged injury.** This is because, for most of the injury indicators, there is no series of aggregated data covering the entire investigation period. This is the case for the following indicators: output, market share, productivity, return on investments, capacity utilisation, inventories, cash flow, wages or growth.

But even where there is aggregated data available for the whole injury investigation period, the timely coincidence between injury and subject imports is not clear:

- Prices of the UK producers are overall increasing during the injury investigation period (1 April 2020 until 31 March 2024) and it seems that the UK costs to make and sell can be transferred to prices (Figures 8 and 9).
- Domestic sales decrease in 2022-2023, when subject imports start increasing significantly but domestic sales increase again in 2023-2024, when subject imports increase the most.
- Profitability: according to the SEF the profitability is lower in the last two years. However, based on Figures 8 and 9, profitability increases in the period 2023-2024, when imports of the goods concerned are at the highest level.

The WTO ADA requires that **other relevant factors** that may have caused injury be analysed.

---

<sup>2</sup> SEF Para 281

The SEF makes a rather deficient assessment of other possible factors of injury. It does not assess any of the factors listed in Article 3.5 except for the volumes imported from other main countries but not the prices since they all appear to be not reliable. Total import volumes are also not provided.

In any case, in terms of volumes, it appears that imports from Lithuania and the UAE may have taken market share from the German exporters, instead of from the domestic industry (whose decrease in sales during the period investigated has not been demonstrated).

As already raised in the comments to the preliminary determination, an important element in the assessment of import evolution is the development of **demand** during the investigation period. However, no such assessment has been provided in the SEF.

Furthermore, there is a lack of any information about the other 19 UK producers, in order to assess any **competition issues** that may be present on the domestic market.

**Therefore, the analysis of a causal link and the impact of other factors as provided for in Article 3.5 of the WTO ADA is substantially incomplete.**

#### **4. CONCLUSION**

In view of the above, the shortcomings of this investigation are so significant that it should be terminated without delay. In particular, there is a complete lack of appropriate evidence to substantiate the case. In addition, the examination made of this insufficient evidence is not conclusive. It is impossible to conclude that the domestic industry is suffering material injury and there is no causal link between an increase of imports from the countries concerned and the alleged injury to the domestic industry. Overall, the case has the following shortcomings:

- The whole **injury analysis** is inadequate and incomplete. It is based on a sample that is not representative and on extremely deficient information provided by the respondents, which cannot be considered as the domestic industry as a whole. The information contained in the SEF is clearly not sufficient to support a finding of material injury.
- The **causality analysis** is unfounded: there is no clear correlation between the increase of subject imports and any (non-demonstrated) injury of the domestic industry. The SEF also fails to assess any other potential contributing factors.

**In view of the elements contained in this submission and in the Commission's previous written submissions, this investigation is highly deficient in many respects. The initiation was already lacking sufficient evidence, and this continues to be the case. Any measures imposed on such weak grounds are clearly not warranted. Therefore, the investigation should be terminated without further delay.**