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GREAT BRITAIN AND NORTHERN IRELAND**

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Trade Remedies Authority

07-10-2025 No. (36.1.5) SDR36-1838

RE: INVESTIGATION No. AD0059. Dumping investigation into certain engine oils and hydraulic fluids imported into the United Kingdom originating in Lithuania and the United Arab Emirates.

**Submission of the Republic of Lithuania in response to
Statement of essential facts**

The Embassy of the Republic of Lithuania to the United Kingdom (the Embassy) would like to thank the Trade Remedies Authority (TRA) for the opportunity to submit its response regarding the Statement of Essential Facts (SEF) in the anti-dumping investigation concerning imports of certain engine oils and hydraulic fluids (Oils).

The Embassy reiterates that Lithuania is committed to developing relations with the United Kingdom (UK) in various fields, including the economy and bilateral trade. Therefore, the Embassy considers it as its responsibility to emphasize that many of the arguments and supporting evidence previously submitted in response to the Provisional Affirmative Determination (PAD) were not adequately assessed or were disregarded without proper justification.

1. Two representatives out of 21 known UK domestic producers are unjustifiably treated as representatives of the entire UK industry.

The TRA has determined that the UK producers who registered to the case account for approximately 20-30% of domestic production. Furthermore the TRA established that the UK industry is fragmented and made up of at least 21 known UK producers of various size [108].

The production of UK producers who did not participate in the investigation has been estimated using the ratio of employees to production from participating UK producers, based on Companies House records. This has resulted in an estimated UK production of the like goods of 197 megalitres per year [109].

From the four sampled UK domestic producers only Aztec Oils Ltd (Aztec) and Paterson Enterprises Ltd (Paterson) fully participated in the investigation and provided questionnaire responses [237]. The combined output of both companies amounted to 27–35 megalitres per year, representing approximately 13.7–17.8% of the estimated UK production.

Therefore, in our opinion the conclusion of the investigation was conducted essentially on behalf of two specific local producer rather than the entire UK industry.

Furthermore, according to Article 5.4 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping agreement, ADA), 5.4 "An investigation shall not be initiated (...) unless the authorities have determined, (...) that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose **collective output** constitutes more than 50 per cent of the **total production** of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

Given that Aztec and Paterson represent only approximately 13.7-17.8% of the UK production, it is unclear how does TRA ensures that the domestic industry's total input reaches the required threshold of support.

2. UK industry did not suffer any actual decline or injury.

Article 3.4 of the WTO ADA lists a number of factors that need to be analysed in order to show injury to the domestic industry, such as actual and potential decline in sales and profits; decline in market share, productivity and capacity utilisation; negative effect on cash flow, inventories and employment.

In SEF it is stated that TRA selected UK producers to be sampled for the purpose of the injury assessments, as set out above (at Section C2.1 UK producers). Four UK producers were sampled, of which two (Aztec and Paterson) provided questionnaire responses [206]. The TRA received full injury data from two UK producers [267].

The investigation identified only one company that had declining trading, namely the applicant Aztec. As can be seen from the SEF charts, all of the business performance indicators of the above-mentioned producer Paterson that participated in the investigation improved: for example, Aztec reported in its verified questionnaire response that the volume of domestic sales of engine oils have fallen by 25-30% over the injury period, and that the volume of domestic sales of hydraulic fluids have declined by 20-25% [238]. Paterson submitted that over the injury period domestic sales volumes have increased by 52% for engine oils and 21% for hydraulic fluids [239].

Aztec's audited account's document a reduction in gross profit between financial year 2023 and 2024 of approximately 19%, and a reduction in operating profit over the same period of 62% [240]. Paterson's audited accounts document an increase in gross profit between financial year 2023 and 2024 of approximately 10% and an increase in net operating profits after tax of approximately 28% [241]. Information from Paterson indicates that its output has increased over the injury period for both engine oils and hydraulic fluids, both in terms of volume and value [244]. Paterson has submitted that the productivity of its employees has increased over the injury period, by 38% in relation to engine oils, and 16% in relation to hydraulic fluids [249]. Paterson's supplied data shows capacities have increased throughout the injury period, although capacity utilisation has fluctuated, there was an overall upward trajectory [251].

Above mentioned economic indicators of two UK producers do not represent the situation of all industry and are ambiguous. At least one company's main economic data (sales volume, profitability, average salary, etc.) increased, and it didn't suffer injury.

3. Development of imports from Lithuania

Concerning the assessment of the volume of dumped imports, Article 5.8 of the WTO Anti-dumping agreement determines that “The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member.”

In SEF TRA stated that the most reliable import data that the TRA has access to is the publicly available, 8-digit HMRC OTS import data. This data may include some goods that are out of the scope of this investigation, however, the TRA has assessed that most imports reported under these codes are likely to be the goods concerned. This is because the out-of-scope goods that can be defined under the same commodity codes (such as gear oil, locomotive lubricant etc) are more specialist in their application, and so are imported and consumed less than the goods concerned [131]. The TRA has examined the confidential 10-digit raw HMRC Customs declarations data. However, it cannot be used as it is potentially disclosive. Regardless, when comparing the raw HMRC customs declaration data at the 10-digit level to the HMRC OTS data at the 8-digit level, the differences between the two data sets are minimal. This allows the TRA the confidence to use the HMRC OTS 8-digit data as representative of the imports of the goods concerned for the purposes of the investigation [132].

In our opinion, this is a key factor that could lead to the exclusion of imports from Lithuania from the scope of the investigation, as it is just 0,14% more than negligible criteria. The goods that are out of the scope of this investigation cannot be included in the calculation of the import share. Therefore, if the goods that are not in the scope of the investigation were excluded, the imports from Lithuania would be below 3% threshold.

Another particularly important factor should also be noted. According to the Company’s UAB SCT Lubricants (SCT) data, some quantities of goods exported by the Company from Lithuania did not remain on the UK market but was immediately exported to Ireland. The quantity of products re-exported to Ireland should be eliminated from the quantity of goods exported from Lithuania to the UK.

In this context, the SEF indicates that Lithuanian imports represent only 3.14 % of total imports into the UK, compared to 14.01 % from the UAE, placing Lithuanian imports very close to de minimis level. According to the factual import volume from SCT, import share by volume for the Company was just 2.88% (Company's response submission in response to PAD, Article 2).

Lithuanian imports volume is significantly lower compared to the UAE and share of imports to UK is negligible. Consequently, **imports from Lithuania should be excluded from the scope of the investigation or at the very least not be assessed cumulatively with imports from the UAE.**

4. Dumping calculation methodology.

Articles 2.1 and 2.2 of the WTO ADA determines that:

“2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits”.

Moreover Article 2.2.1.1 of the WTO ADA determines that: **“Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.”**

Lithuanian strongly disagrees with changed dumping calculation methodology which leads to unexplained increase in duty rate (84.72% for SCT and 95.36% for all other Lithuanian exporters). In the Provisional affirmative determination (PAD) the duty rate was set at much lower level - 11,60 % for the Company and 49.59% for other exporters from Lithuania.

The significant increase between the SEF and the PAD raises legitimate questions regarding the reliability, objectivity, and compliance of the TRA’s calculations with applicable legal requirements.

SCT informed the Ministry of Foreign Affairs of Lithuania that it had provided TRA with data and supporting documents which allows to determine/calculate the cost of the Company's production: audited financial statements, detailed sales data for the Lithuanian and UK markets, and other accounting documents. These documents confirm that the Company did not sell goods to the UK at prices lower than those charged in other markets. Furthermore, during the visit of TRA representatives to the Company, they were given the opportunity to check all the necessary documents. Therefore, it remains entirely unclear why, at the final stage of preparing the SEF, the data provided by the Company was suddenly deemed “insufficient.”

Nevertheless, following the publication of the SEF, the SCT provided additional detailed data and documents, which we kindly request be taken into account in the calculation of the normal value and other relevant indicators.

Conclusion

Lithuania kindly requests that the Trade Remedies Authority duly take into account all arguments presented in this submission.

In particular, the Embassy kindly requests:

- That consideration be given to the fact that the economic indicators provided by the two UK producers do not reflect the situation of the entire industry and are ambiguous. At least one company’s key economic data (including sales volume, profitability, and average salary) increased, indicating that it did not suffer injury.
- That Lithuanian and UAE imports be de-cumulated.

- That the volume of imports from Lithuania be calculated by considering only goods falling within the scope of the investigation, rather than all imports under CN codes 27101981 and 27101983.
- That the imports of oils from Lithuania be declared negligible (below 3%) and, consequently, the anti-dumping investigation regarding the import of oils from Lithuania be terminated.
- That the Company's financial data be used in the calculation of the normal value and other relevant indicators.

The Embassy respectfully urges the authorities of the United Kingdom to refrain from imposing any anti-dumping measures under Investigation No. AD0059, as full alignment with the WTO Anti-Dumping Agreement does not appear to have been ensured. In this context, the Embassy believes that the ongoing investigation concerning imports of oils from Lithuania should be concluded.