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ACCESSION OF LITHUANIA

Questions and Replies

The Permanent Mission of the Republic of Lithuania has submitted the following replies to questions raised by Members of the Working Party at the Working Party Meeting held on 14 April 2000.

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III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

5. Law and Legal Acts

Question 1.
The Members would appreciate the additional information provided in the text of document WT/ACC/SPEC/LTU/8/Rev.5 on the hierarchy of laws.

In a bilateral communication, in response to questions tabled at the last meeting, Lithuania has stated that after that all WTO provisions will become part of the national legislation and if necessary they will then be implemented by resolutions/orders (secondary legislation) which define concrete details or set appropriate orders prescribing how to implement the legislation. After accession to the WTO all its provisions will be integral part of the national legislation and be directly applied in Lithuania. If any conflict of law appears an importer would have a right to appeal to the administrative court. Lithuania also lists international treaties and agreements in the legal hierarchy described in paragraph 26. In light of this, the Members would appreciate a statement by Lithuania be included in paragraph 26 clarifying, one way or the other, the status of the provisions of the WTO Agreement vis-à-vis laws in Lithuania that may not be in conformity with WTO provisions.

Reply:

As it was already explained in Lithuania's answers to U.S. Questions, presented in September 1999, one of the basic principles of international law determines that international agreement/treaty is superior to national legislation. With no doubt Lithuania follows this rule. Furthermore, the status of the WTO Agreement as an international agreement in the hierarchy of national legislation of Lithuania was clearly determined in paragraph 26 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5). Also, as it was mentioned in the same paragraph, relevant legislation contains a special provision that in case some provisions of the national legislation differ from the international one, the latter are applied. In fact such the provision only repeats applicability the above-mentioned principle of international law in Lithuania.

After fulfilling internal legal procedures (this mean the ratification by the Parliament in most cases) provisions of international laws are incorporated into the national legal system. If an international agreement/treaty itself requires further implementation (e.g. to implement reduced import duties, etc.) such a requirement would be executed by the appropriate Government Resolution, which always will be based on the corresponding agreement.

The results of the accession negotiations and the WTO Agreements have to be ratified by the Parliament. After that, all WTO provisions will become part of the national legislation and if necessary they will then be implemented by resolutions/orders (secondary legislation) which will define concrete details or set the appropriate orders prescribing how to implement the legislation.

Referring to the wording if necessary underlined above, it should be stressed, that it does not imply, that Lithuania expects to implement WTO provisions only after membership. In fact, the relevant resolutions/orders (secondary legislation) which define concrete details or set appropriate orders prescribing how to implement the relevant legislation will be adopted only in case of adoption of new supplements and amendments to the Laws that are subject of WTO notifications.

Moreover, Lithuania has demonstrated its ability to fulfill WTO requirements before its accession to the WTO and already made the corresponding commitments in the Working Party Report. Lithuania has also presented on a constant basis the Synoptic Table showing the progress in the adoption of legislation (WT/ACC/LTU/36 - the latest version submitted in April 2000). Any regulations subsequently enacted by Lithuania to give effect to the Laws enacted to implement any

Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. (See also WT/ACC/SPEC/LTU/8/Rev.5; paragraph 172.)

Question 2.
In addition, Lithuania has also stated that At the latest upon entry into force of the Protocol of Accession, Lithuania will submit any notification required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Lithuania to give effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. This would seem to imply that Lithuania will not be able to pass all required legislation prior to accession and that it still expects to implement WTO provisions after membership, not before. The Members would appreciate Lithuania's further clarification of this point and the inclusion of this information in this section of the Working Party report.

Reply:

We understood that this question was addressed to the paragraph 172 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5). Referring to the first part of the question and mentioned para, Lithuanian delegation would like to add, to what was explained there, by emphasizing, that paragraph 172 is a commitment paragraph and the text there is standard and identical to the relevant commitment paragraphs in the Working Party Reports on the accession of Estonia, Georgia, Kyrgyz Republic, Latvia, etc. Moreover, such wording was proposed by WTO Members themselves, but not by Lithuania.

Referring to the wording in paragraph 172 any regulation subsequently enacted, it should be emphasized once again, that this wording does not imply that Lithuania will not be able to pass all required legislation prior to accession and that still expects to implement WTO provisions after membership, not before. In fact, the relevant resolutions/orders (secondary legislation) which define concrete details or set appropriate orders prescribing how to implement the legislation will be adopted as was already indicated in the previous answer only in case of the adoption of new supplements and amendments to the Laws, which are subject of WTO notifications.

Moreover, Lithuania has demonstrated its ability to fulfill WTO requirements before its accession to the WTO and already made the appropriate commitments in the Working Party Report. Lithuania has also presented on a constant basis the Synoptic Table showing the progress in the adoption of legislation (WT/ACC/LTU/36 - the latest version submitted in April 2000). Also Lithuanian delegation would like to invite to pay a specific attention to the document Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations presented to the WTO Secretariat in April 2000, which also shows that all required legislation is already adopted.

Question 3.
In addition, the Members would appreciate information on how an importer could invoke WTO provisions if conforming legislation is not yet in place or if contradictory legislation is still in force after accession. Both these eventualities would still appear to be possible.

Reply:

As it was already explained in Lithuania's answers to US Questions presented in September 1999, and to the questions above, after accession all WTO provisions will be integral part of the national legislation and be directly applied in Lithuania. If any conflict of law appears an importer would have a right to appeal to the administrative court and the order of such is explicitly explained in paragraph 27 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5). At present the WTO provisions in Lithuania are applied de facto, but not directly and importers have the right to appeal to international arbitration or judicial bodies.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulations

Trading Rights

Question 4.
Concerning paragraphs 32 to 33, Lithuania has stated that the Law on Alcohol Control of 10 December 1998 has repealed the ban on the importation of strong alcoholic beverages. Lithuania now reserves the production of beverages with an alcoholic strength greater than 22 per cent to special firms. Is this a reference to firms that produce mead? Does the monopoly of these firms extend to the importation of beverages with an alcoholic strength greater than 22 per cent?

Reply:

Firstly, Lithuanian delegation would like to note, that the reference to paragraphs 32 to 33 is made incorrectly. In fact, in paragraphs 63, 64 and 127 of Working Part Report (WT/ACC/SPEC/LTU/8/Rev.5) is written the Law on Alcohol Control of 10 December 1998 has repealed the ban on the importation of strong alcoholic beverages.

As it was already mentioned in paragraph 127 of Working Part Report alcoholic beverages strength greater than 22 per cent in Lithuania can produce state or special enterprises and currently two private companies (companies having this right (license), including also mead company Lietuviskas Midus. It should be also noted, that Lithuania has already notified to the WTO Secretariat explained in detail the operation of such enterprises as State Trading on 4 June 1999 (WT/ACC/LTU/35).

Besides, such an order in any way does not contradict with any WTO requirement. The fact, that production of alcoholic beverages strength greater than 22 per cent is reserved for some enterprises, is a limitation for domestic production of alcohol products, but does not by any means restrict the import of the same alcohol products. As it is already explained in paragraph 126 of Working Part Report, the State does not maintain any form of distribution monopoly with respect to alcohol, nor does it play a controlling role. The import system is entirely different, described many times, and, in Lithuania's view, in full conformity with WTO requirements. Moreover, we can say, that Lithuania puts more restrictions on domestic production of alcohol beverages than on imported ones. (see also Working Party Report, Synoptic Table showing the progress in the adoption of legislation (WT/ACC/LTU/36 - the latest version submitted in April 2000), the document Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations presented to WTO Secretariat in April 2000).

Question 5.
How do licensing requirements for the importation of such beverages differ from those for alcoholic beverages of a lower alcoholic content?

Reply:

In document WT/ACC/LTU/19 of 10 February 1998 was provided all relevant information, how licensing requirements for the importation of such beverages differ from those for alcoholic beverages of a lower alcoholic content. Thus, the same requirements for importation apply to all kinds of alcoholic beverages. Moreover, the Government Resolution No. 559 of 5 June 1997 On Licensing of Importation, Wholesale and Retail Trade in Alcoholic Products, in which are provided all licensing requirements for importation of alcoholic beverages, was submitted to WTO Secretariat.

As it was already explained in document WT/ACC/LTU/19 and Lithuania's answers to U.S. Questions, presented in September 1999, to obtain a licence to import alcoholic beverages (of a lower

and higher alcohol content), an applicant must provide the following documents to the State Tobacco and Alcohol Control Service:

- motivated application with names and addresses of company founders, managing staff, whose nominal value of share makes up more than 10 per cent of authorized capital, description of the commercial-economic activity for which a licence is requested, names of countries and companies from which the company intends to import alcoholic beverages, description of alcoholic beverages to be imported, addresses of warehouses from which the wholesale trade will be executed;
- the notarized duplicates of contract establishing enterprise, certificate of registration and statutes (excluding enterprises functioning without statutes);
- the approval of the major (board) of the city (district) where the company is registered [if the enterprise has subdivisions (branches, storage's) which practice wholesale of alcohol products in other cities (districts), the permission of the major (board) is needed];
- a tax inspection certificate confirming all income declared and taxes paid during the last 3 years period, also information if any cheating in the payment of taxes during the same period was determined;
- a certificate from the Customs office regarding compliance with customs obligations;
- a certificate of State Social Insurance that taxes have been paid;
- originals of the authorization of foreign companies producing alcoholic beverages to represent them (to sell their production) with translation into Lithuanian;
- a certificate (original) issued by the foreign register that foreign company-producer from which alcoholic beverages will be supplied, has been registered in that country (company's activity should be also indicated), and its translation into Lithuanian;
- samples of the labels of beverages planned to be imported or catalogues;
- the original of the quality certificate (issued separately for each kind of alcoholic beverages) issued by a foreign company producing alcoholic beverages;
- a certificate of a foreign company producing alcoholic beverages (except beer) that for alcoholic beverages planned to be imported in Lithuania retail sale is also allowed in that country (the certificate should be confirmed by the institution which regulates trade in that country);
- he notarized duplicate of contract for storage or warehouse rental (in the case of rent) or notarized duplicate of storage or warehouse legal registration (if storage's belongs by property right); and
- confirmation of payment of Stamp taxes.

Question 6.
Paragraph 33 of document WT/ACC/SPEC/LTU/8/Rev.5 states that domestically-produced alcohol was subject to the same restrictions and regulations as imported products. The revised law on stamp taxes (Resolution No. 601 of 18 May 1999), however, states the following: Enterprises producing beverages included in paragraph 17.2 and engaged in wholesale trade thereof shall not pay the stamp tax specified in this paragraph. This appears to exempt domestic alcohol producers who engage in wholesale trade from the 100,000 litas tax applied to wholesalers of imported alcoholic beverages. How is this provision consistent with Article III of the GATT?

Reply:

The mentioned wording Enterprises producing beverages included in paragraph 17.2 and engaged in wholesale trade thereof shall not pay the stamp tax specified in this paragraph does not mean any discrimination of alcohol importers. The producers of alcohol products with more than 22 per cent of alcohol content are paying stamp tax for production activity licence of 20,000 litas (US$ 5,000) exactly as importers are paying for importation activity licence of 80,000 litas (US$ 20,000). In both cases there is no need to pay additionally for wholesale activity. The tax for the main

activity is different, but this is well grounded, taking into account the specificity of the production sector. Moreover, the production itself is not a subject of the WTO and all the producers have a right to sell freely their production all over the globe. What concerns wholesale alone of domestically produced alcoholic beverages, the stamp tax for activity licence is 80,000 litas (US$ 20,000) and could be considered being discriminated versus importation activity licence stamp tax, having in mind that importer pays only 80,000 litas (US$ 20,000) for importation, and does not pay additionally for wholesale. Furthermore, it is necessary to bear in mind that such importation/wholesale licenses also include the larger range of products than wholesale licenses for domestically produced goods only.

From 1 May 2000 stamp taxes for the activity licenses for importation/wholesale and wholesale of alcohol and alcoholic beverages have been equalized in accordance with Government Resolution No. 366 of 31 March 2000 (Government Resolution 601 of 18 May 1999 is not longer valid). Under the new order, an activity licence to import and engage in wholesale of imported vodka and other spirits costs 80,000 litas (US$20,000); for wine and beer - 40,000 litas (US$10,000); beer only - 10,000 litas (US$2,500). The same taxes are charged for activity licenses to engage in wholesale trade of alcohol produced in Lithuania. The new system, in our view, is consistent with the national treatment obligation.

Question 7.
Table 4 in document WT/ACC/SPEC/LTU/8/Rev.5 indicates that the fee structure for importation and wholesale of alcohol and tobacco products differs from the fee structure for wholesaling alone. The text of Resolution No. 601 appears to state that a licence to engage in wholesale trade in imported alcoholic beverages with an alcoholic strength of less than 22 per cent is 100,000 litas, while the licence to wholesale such domestic products is 50,000 litas. Please explain how these differences meet the criteria of Article III.2 which states that products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

Reply:

Firstly, referring to the fee structure for importation and wholesale of alcohol and tobacco products and the fee structure for wholesale alone, it should be noted that it is fully, in our view, consistent with Article III of GATT. Contrary to what was claimed in the question, the Table 4 (Working Part Report, WT/ACC/SPEC/LTU/8/Rev.5) and indicates that the stamp taxes for a licence to engage in importation/wholesale of alcoholic beverages with an alcoholic strength of less than 22 per cent are 50,000 litas (US$12,500) and the same stamp taxes are for the wholesale licenses of such domestic products. In the text of Government Resolution No. 601 it was only slight difference in categories titles (i.e. alcoholic beverages with less than 22 per cent of alcohol content; and wine with less than 22 per cent of alcohol content and beer), however the essence of the matter was the same and the stamp taxes are equal in both cases.

Moreover, it should be recalled, that from 1 May 2000 stamp taxes for the activity licenses for importation/wholesale and wholesale of alcoholic beverages have been further reduced in accordance with Government Resolution No. 366 of 31 March 2000 (Government Resolution 601 of 18 May 1999 is not longer valid). Under the new order, the stamp taxes for an activity licence to import and engage in wholesale of alcoholic beverages with an alcoholic strength of less than 22 per cent (wine and beer) are 40,000 litas (US$ 10,000). The same taxes are charged for activity licenses to engage in wholesale trade of domestic alcohol beverages. The translation of the Government Resolution No. 366 was submitted to the WTO Secretariat in May 2000.

In Table 4 (Working Part Report) it is also indicated, that the licence fee for importation/wholesale of tobacco products - 15,000 litas per year - was equal to the corresponding fee for wholesale trade in tobacco products according to Government Resolution No. 180 of 13 February 1998. It is not understandable, why for the US representatives the stamp taxes licenses

system on tobacco is differs. The Table 4 exactly indicates, that the stamp taxes system for the wholesale and wholesale/importation of tobacco is completely the same.

Question 8.
With respect to paragraphs 37 to 38 concerning the activity fees applied for importation of petroleum products, Lithuania has indicated to us bilaterally that it intends to unify those for importing and wholesaling petroleum products. Paragraph 38 states that stamp taxes for activity licence in importation/wholesale and wholesale of oil and oil products would be equalized through a Government Resolution [expected to be approved in February/March 2000]. Has the Government Resolution been enacted? If so, an appropriate citation and date should be provided. May the Members have a copy of the resolution in translation?

Reply:

Stamp taxes for activity licence in importation/wholesale and wholesale of oil and oil products as well as of motor oils have already been equalized through the Government Resolution No. 366 of 31 March 2000 (presented to the WTO Secretariat in May 2000): the activity licenses for importation/wholesale of oil and oil products cost 120,000 litas (30,000 US$) and completely the same stamp taxes are for the wholesale of oil and oil products; the stamp taxes for the licenses to engage in importation/wholesale of motor oil are 5000 litas (1250 US$) and the stamp taxes for wholesale of the motor oil also cost 5000 litas (1250 US$). The new equalized stamp taxes have been applied from 1 May 2000. The new system is fully consistent with the national treatment obligation.

Question 9.
The Members also note that the tariff on petroleum products was increased, in Resolution No. 641 of 19 May 1999, from five per cent to fifteen per cent. Please update the Working Party on Lithuania's activity fees for importing and wholesaling petroleum products and on the relationship between the increased import tariff to the equalization of activity fees.

Reply:

Duty tariff increase on petroleum products from 5 per cent to 15 per cent (Resolution No. 641 of 19 May 1999) was related to the privatization agreement on 29 October 1999, when the USA company Williams International had bought 33 per cent of the shares of the State-owned oil refinery, joint stock company Mazeikiu Nafta.

This increase of duty tariffs on petroleum has no relationship with the equalization of activity fees exactly as duty tariffs, for example on alcohol or tobacco products have no relationship with relevant activity stamp taxes.

Customs Code

Question 10.
Have the implementing regulations to the Customs Code referred to in document WT/ACC/LTU/12 and in the previous draft report been adopted? What, if any, additional implementing regulations are still necessary?

Reply:

As it was already indicated in the paragraph 42 of the Working Part Report (WT/ACC/SPEC/LTU/8/Rev.5), a number of implementing regulations to the Customs Code have already been adopted starting from year 1997. The implementation of the provisions of the Code was fully based on the Implementing Provisions of the Community Customs Code (Commission Regulation No. 93/2454/EEC and its amendments). These regulations are mainly based on the Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down the provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code.

The following regulations already adopted, in our view, are most important:

- Government Resolution No. 848 of 31 July 1997 On Approval of the Order of Application of Customs Formalities in Connection with Fishing Products Taken (Obtained) and Processed (Produced) by Fishing Vessels Flying the State Flag of Lithuania;
- Government Resolution No. 863 of 1 August 1997 On Approval of the Order of Declaration for Customs Purposes of Returned Goods;
- Government Resolution No. 980 of 11 September 1997 On Approval of the Order of Ensuring of the Fulfilment of Debtor's Obligations to Customs;
- Government Resolution No. 1077 of 1 October 1997 On the Order of Determination of Origin of Goods and on Certificates of Origin (General Form);
- Government Resolution No. 748 of 9 June 1999 On the Approval of Order of Customs Valuation of Goods (which replaced the Temporary Order of Customs Valuation of Goods adopted by Government Resolution No. 897 of 11 August 1997); and
- Order of the Minister of Finance No. 3 of 13 January 2000 On Approval of Regulation on Goods' Declaration Procedure and Customs Control.

The drafts of some other still necessary implementing regulations are prepared and submitted for the Government for its consideration (e.g. Draft Law on Free Warehouses, Draft Government Resolution On Approval of the Order of Destruction of Goods under Customs Control). Also in year 2000 the draft regulations (revised versions of the some existing regulations) concerning the operation of Customs warehouses, Customs transit procedure and temporary admission procedure should be prepared and submitted to the Government.

It should be stressed that aforementioned implementing regulations are not related to the implementation of WTO Customs Valuation Agreement itself and that current Lithuania's legal acts on customs valuation are, in our view, already in full conformity with the Agreement (See also paragraphs 73, 74, 75 and 76 of the Working Part Report, and Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations of 6 April 2000).

Fees and Charges for Services Rendered

Question 11.
Table 5 in document WT/ACC/SPEC/LTU/8/Rev.5 lists the stamp tax charges for customs services rendered. It indicates that to import colour copying machines for commercial purposes, an import permit costing 4,000 litas must be obtained, while the permit for importing other color copying machines is 40 litas. How is the difference in the cost of the permit related to the cost of issuing it for the two types of machines? Are such permits required for domestic machines? How does this permit prevent use of the machines for counterfeiting?

Reply:

As it is already indicated in the Table 5 in Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), the Police Department to the Ministry of Interior issues two types of permits to natural persons and enterprises for import (export) of colour copy machines, the stamp taxes are as follows:

- for their own needs, which costs 40 litas;
- for commercial purposes, which costs 4,000 litas.

The aim of these stamp taxes is to cover expenses of issuance of permits and to control the use of colour copy machinery. The tax for permit to import (export) colour copy machines for

commercial purposes is much higher because the persons (natural or legal) who are engaged in sale of colour copy machinery usually import not only one colour copy machine. In addition, imported colour copy machines are sold to the third persons and expenses of their control become even more higher.

Referring to the question, whether such permits are required for domestic machines, it should be stressed that Lithuania does not produce colour copy machines.

With reference to the question, how do these permits prevent use of the machines for counterfeiting, it should be noted, that stamp taxes has not a direct effect on the prevention, but it surely has an indirect one: the financial means from collection of stamp taxes are used for the relevant policy actions to block up illegal printing of counterfeit documents. For these purposes, the Police Department keeps the collection of copies made with legally imported colour copy machines. If the cases of counterfeited documents are established, these documents are compared with the copies of aforementioned collection. Therefore, the cases of counterfeit documents made with legally imported colour copy machines are promptly disclosed and the permits for their owners to keep colour copy machine are repealed.

Application of Internal Taxes to Imports

Question 12.
Concerning the information provided in paragraph 58, would imported beverages with the same level alcohol strength as mead be taxed at the same rate as mead, or would there be other factors in determining their eligibility?

Reply:

As it was already stressed in the paragraph 58 of the Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5) that products under HS Code 2208.90.69.1 included mead of foreign origin but not the beverages of the same level strength, i.e. under the Law on Excise Tax Article 5[1] eligible beverages are mead beverages (kind of liqueur, produced on mead basis) (domestic or foreign).

We would like to explain, that the different taxation of the mead beverages (domestic or foreign) from the other beverages is due to the costs of the special production technology of the mead beverages: the raw materials used in such production are 10 to 12 times more expensive (the most important ingredient of these beverages is mead), than the spirit raw material used in the production of the other alcohol beverages. That is why, the prices of the alcohol beverages produced on mead basis are much higher than the prices of the other alcohol beverages.

Quantitative Import Restrictions, including Prohibitions, Quotas and Licensing Systems

Question 13.
Lithuania maintains import licensing on several types of goods, both through activity licensing and product licensing. In document WT/ACC/LTU/19, most licensing for imports is categorized as automatic. To obtain an licence to import alcoholic beverages and alcoholic products, however, it appears necessary to approach more than three administrative bodies in connection with an application. Firms must have the approval of the mayor of the district where the company is registered, a tax inspection certificate, a Customs Office certificate, a certificate of State Social Insurance, among several other requirements.

While the licence required is, technically, an activity licence to import and/or wholesale alcoholic beverages, the requirements act as a barrier to providing the goods for sale, and act in the same way as traditional goods licensing requirements. The requirements for the importation of alcoholic beverages cannot accurately be termed automatic because the firm must meet the requirements of other agencies to meet the criteria for the licence. In addition,

the Members wonder if these requirements exist for the domestic production or distribution of domestic production of alcoholic beverages, raising the issue of conformity with Article III. Does Lithuania intend to streamline these requirements further to accurately meet the definition of automatic licensing? If so, the Members would like to see information on this point. If not, the Members would appreciate an explanation on how these requirements are consistent with the provision of the WTO Agreement on Import Licensing Procedures and Article III of the GATT 1994.

Reply:

As it was already explained in paragraph 32 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), certain activities in Lithuania were subject to licensing in accordance with the Law on Amendments and Supplements of the Law on Enterprises of 25 September 1997. Lithuania maintained the same criteria and procedures for reviewing applications for licenses to engage in trade or production of goods, whether the applicants intended to deal in domestic or imported goods, or a combination thereof, including and engagement in trade of alcohol beverages, except the rest activities noted in paragraph 35 of document WT/ACC/SPEC/LTU/8/Rev 5.

Referring to the wording it appears necessary to approach more than three administrative bodies in connection with an application, it should be stressed, that there is no need for firms or companies to approach to these aforementioned institutions, i.e. Tax Inspection, Customs Office, State Social Insurance Office, because the responsible institution – the Ministry of Economy - issuing the licence, is collecting this data by itself. Therefore, the procedure is simple and, in our opinion, can not be considered as restrictive.

Also it should be emphasized, that, in our view, licensing requirements for the importation of alcoholic beverages in Lithuania are in full conformity with GATT Article III, taking into account that the same licensing requirements are applied to importation and domestic production, except of some specific reasonable requirements for domestic production, such as quality, technical and hygiene conditions and other, which can be applied only to production, not for importation. Moreover, it should be recalled, that the production is not the subject of WTO Agreements.

With reference to the question, whether Lithuania intend to streamline these requirements further to accurately meet the definition of automatic licensing, Lithuanian delegation would like to stress, that Lithuania has never had any intention to abolish non-automatic licencing, the requirements of which are fully consistent with the requirements of WTO Agreement on Import Licensing Procedures, having in mind, that the same criteria and procedures are applied in Lithuania for reviewing applications for licenses to engage in trade or production of goods, whether the applicants intended to deal with domestic or imported goods.

Question 14.
In addition, there is no information in document WT/ACC/LTU/19 on the length of time required to obtain import licenses. How long does it take for requests for automatic licenses to be acted on? How long does it take for requests for non-automatic licenses to be acted on? Finally, the Members would ask what became of the licensing requirement on electric fishing tackle, listed in document WT/ACC/LTU/19, but missing from the list in paragraph 65.

Reply:

The length of time required to obtain import licenses is up to 30 days.

Referring to electric fishing tackle, it should be emphasized that they were not missed from the list in paragraph 65 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev 5). As it was already mentioned in document WT/ACC/LTU/19, it should be recalled once again, that there are no defined requirements on electric fishing tackle, because until this time there were no applications to obtain licence to import electric fishing tackle. As far as the criteria for granting permission to import used

tires, upon the requests by the Members, were provided in the same paragraph 65, it might have an impression raised, that the requirements for electric fishing tackle were missing.

Question 15.
The Members seek information on how Lithuania operates its licensing system described in paragraph 66 of the Draft Report of the Working Party.

Reply:

We understand that the paragraphs 64 and 65 mentioned in paragraph 66 of the Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5) were kept in mind. However, paragraph 64 does not contain information about the licensing system. If the alcohol import licensing was kept in mind, then it was broadly explained in many places previously. The licensing procedures mentioned in the paragraph 65 were already in detail outlined in the document WT/ACC/LTU/19, what is once again mentioned in paragraph 65 and we truly do not know what can be added more.

Besides, it was not once noted already that the indicated paragraphs 64 and 65 of the Working Party Report in paragraph 66 should be crossed out because Lithuania is not prepared to forego the right to control import/export of goods provided in paragraphs 64 and 65 (narcotics, goods and loads of dual purposes, etc.). These exceptions provided in mentioned paragraphs are justified, and Lithuania will exercise its rights in this respect in conformity with WTO provisions. Therefore, the text of paragraph 66, in our view, should be corrected as follows:

> 66. The representative of Lithuania confirmed that Lithuania would, from the date of accession, eliminate and would not introduce, reintroduce or apply quantitative restrictions on imports or other non-tariff measures such as [licensing,] quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement. He added that import licenses required for importation described in paragraphs [64 and 65] would be granted in conformity with WTO provisions. He further confirmed that the legal authority of the Government of Lithuania to suspend imports or exports or to apply licensing requirements that could be used to suspend.

Customs Valuation

Question 16.
Unfortunately, an exhaustive review of the available documents, i.e., the Customs Code which came into effect on 1 January 1998 and Government Resolution No. 748, even after using the checklist in Table 9, the Members find that certain provisions of the Agreement are not reflected in these laws. The Members have provided Lithuania with a list of our remaining questions and would like the opportunity to discuss them with a view to resolving our concerns. In addition to these specific points, the Members have a more generalized concern that the Members would like to discuss in the Working Party. First, the Members think it would be helpful if Lithuania could provide a copy of the Temporary Order of Customs Valuation of Goods, adopted by Government Resolution No. 897 of 11 August 1997. The Members cannot find a reference that indicates it was ever provided to the WP, but it is referred to extensively in the text as relevant to Lithuania's implementation of the WTO Agreement on Customs Valuation. While paragraph 74 states that Government Resolution No. 748 contains all of the provisions of Resolution No. 897 relevant to implementing the Customs Valuation Code, the Members note that these appear to line up with some of the provisions the Members are missing. In the same sense, Article 29 of the Customs Code provides that the value of imported goods is to be determined in accordance with the provisions of Chapter VI (customs valuation), but also in accordance with other import taxes, import prohibitions and restrictions related to the value of the goods. If the provisions of Article 29 have not been specifically repealed, it

would appear to continue to permit customs valuation to be based on measures that are inconsistent with the WTO Valuation Agreement. Has it been repealed?

Reply:

In Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5) mentioned Temporary Order of Customs Valuation of Goods adopted by Government Resolution No. 897 of 11 August 1997 was temporary and is not longer valid. Therefore, in our view, there is no sense of translating it into English and, more importantly, it was not relevant to implementation of the WTO Customs Valuation Agreement. Moreover, the new Order of Customs Valuation of Goods fully conforming with WTO requirements, i.e. Government Resolution No. 748 of 9 June 1999, which came into force on 1 April 2000, was submitted to WTO Secretariat even in July 1999.

As regards Article 29 of the Customs Code, the concern expressed in Questions 16 and 17 as it was already explained in paragraph 73 of Working Party Report is a misunderstanding arising from a translation error. We would like assure once again, Article 29 is fully consistent with WTO provisions and requires that the rules of Customs valuation laid down by the Customs Code (detailed customs valuation rules and procedures are laid down in the secondary legislation, namely in the Government Resolution Nr.748) have to be used in all cases when import duties and other import taxes, or value-based import prohibitions (for such products as snuffing and chewing tobacco or nuclear products) or restrictions (that actually mean licenses or certificates procedures) are applied.

Lithuania's legislation on customs valuation, in our view, is fully consistent with WTO provisions. As it was already explained in the paragraph 74 of Working Part Report, other documents and Replies to Comment 1, Comment 3 and Comment 6, Lithuania has incorporated the Interpretative Notes set forth in Annex I of the WTO Valuation Agreement. There are missing only some examples of customs valuation methods (provided in the Agreement only as the examples) that are not essential. Nevertheless, they will be also incorporated in the Methodics of Customs Valuation to be approved by the Customs Department in the nearest future. The new customs valuation Order that ensured full conformity with WTO requirements had entered into force on 1 April 2000. A comparison of the new Order with the provisions of the Customs Valuation Agreement, on an article-by-article basis, is presented in Table 9 of Working Party Report.

Question 17.

If Lithuania removed its price-in-checking system on 1 April 2000, it would appear that this provision is no longer necessary. What is the use and intent of Article 29 of the Customs Code under current circumstances? More seriously, the Members are concerned with various provisions found in Resolution No. 748 which conflict with the WTO Valuation Agreement.

- **For example, §2.1 sets forth situations where the transaction value of identical or similar goods cannot be used. This would seem to be inconsistent with the WTO Valuation Agreement.**
- **§2.2 and §2.3. §2.4, §2.5 and §55 describe the use of price list and a database and disclosure of information contained in the database which appears to be inconsistent with the WTO Valuation Agreement. The use of databases or price lists to establish customs value is strictly prohibited as set forth in Article 7 of the WTO Valuation Agreement.**
- **The customs value of imported goods is based on the transaction value and hierarchical value methods established in Articles 2 to 7. The Members wish to stress the following with regard to price data bases:**
- **The technical accuracy of price data bases is very questionable, given that the information will not be contemporaneous to an imported sale.**
- **The use of data bases also presents issues related to transparency to the private sector.**

- **One effect of the use of data bases is that it places an incorrect presumption of doubt on every import transaction – a presumption that creates an unwarranted burden on importers and exporters.**
- **The use of data bases can result in unacceptable market access barriers.**
- **§51, 52 and 53 in Resolution No. 748 concern the use of a value declaration. The Technical Committee on Customs Valuation recently concluded that value declaration forms should only be used on a short term basis while risk management and post importation audit systems are developed and established within a Customs Administration. Thus, the Members do not encourage the use of value declarations. However, if value declaration are to be used, they should be used for a limited period of time.**

Reply:

As it was already explained in document Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations, presented to WTO Secretariat in April 2000, the former customs valuation system (including minimum import prices and price-in-checking prices) expired on 31 March 2000 and was replaced by the new Order on 1 April 2000. The price-in checking system as well as reference or minimum value system was a transitional measure. The new legislation is fully consistent with WTO requirements.

As regards Article 29 of the Customs Code, the concern expressed in Questions 16 and in Question 17 as well as it was already explained in paragraph 73 of Working Party Report is a misunderstanding arising from a translation error. We would like assure once again, that Article 29 is fully consistent with WTO provisions. It is applied to the customs valuation procedures (transaction value method or to the procedures, that applied when a concrete customs valuation method is not possible to determine), laid down in the Section III of Customs Code. The Article 29 foresees that the rules of Customs valuation laid down by the Customs Code have to be used in all cases when import duties and other import taxes, or value-based import prohibitions (for such products as snuffing and chewing tobacco or nuclear products) or restrictions (that actually mean licenses or certificates procedures) are applied.

The provisions of paragraph 2.1 of Government Resolution No. 748 were introduced after strengthening of value control as a temporary measure in order to avoid situations when extremely low values of identical or similar goods earlier imported mainly by natural persons could effect the valuation of consignments imported later. The present situation allows us to repeal this paragraph as no longer necessary. Therefore, the Resolution amendment is under preparation and will be presented to the Government for consideration in the nearest future.

As regards to the list of comparative (reference) prices, the Customs authorities only as a source of information use them in order to find out whether additional examination of the declared value of goods by valuation specialists is necessary. The list of goods subject to this value control regime mainly contains the goods sensitive to under-valuation. The Customs valuation database contains data collected from import declarations cleared in three previous months and is mainly used as a tool to find the information necessary. In fact that does not create any unacceptable market access barriers and, in our view, does not contradict to the Article 7 of the WTO Valuation Agreement.

Regarding the disclosure of the information, according Article 8 of the Customs Code, the Customs authorities have no right to disclose the information that by its nature is confidential. Therefore, the printouts from the Customs valuation database do not contain confidential information. It is obvious, that this does not create any possibility of information disclosure.

The provisions of the Government Resolution No. 748 of 9 June 1999 On the Approval of Order of Customs Valuation of Goods governing the use of value declaration are harmonised with the

corresponding provisions (Articles 178 and 179) of the Commission Regulation (EEC) No. 2454/93 of 2 July 1993 that lay down the provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code. Presently the amendment to Government Resolution No. 748, which foresees to decrease the number of cases when it is required to present the value declaration in support of the normal Customs declaration, is under preparation and will be presented to the Government for consideration in the nearest future.

Specific comments on Lithuania's implementation of the WTO Agreement on Customs Valuation

Comment 1
In the Members view, Lithuania has not fully implemented Article 5 of the WTO Valuation Agreement, concerning deductive value. It appears that Lithuania has not adequately distinguished the three different methods of applying deductive value under Article 5 of the WTO Valuation Agreement. In addition, many of the Annex 1 Interpretative Notes are missing, including Note 5.2, 5.3, 5.4, 5.6-first sentence, 5.7, 5.8, 5.10 and 5.11.

Reply:

According to the Article 31.2.3. of the Customs Code the expression at or about the time of importation but not more than 90 days prior or after covers the first and the second methods of applying deductive value under Article 5.1.(a) and Article 5.1.(b) of the WTO Valuation Agreement. The detailed rules for the application of both methods are laid down in paragraph 21 of the Order of Customs Valuation of Goods approved by the Government Resolution No. 748 of 9 June 1999. So, in fact, according to the legislation which now is in force in Lithuania the first and the second methods of applying deductive value under Article 5 of the WTO Valuation Agreement are merged. In our point of view this problem is purely technical, nevertheless, the amendment of the above-mentioned Order (taking into account also Note 5.10) is under preparation and will be presented to Government for consideration in the nearest future.

As regards Interpretative Notes, Notes 5.6-first sentence and 5.7 form the part of paragraph 21.1 of the Order of Customs Valuation of Goods, Note 5.8 is incorporated in paragraph 21.3 and Note 5.11 in paragraph 22.1 thereof. Notes 5.2, 5.3 and 5.4 (examples) are incorporated into the Draft Methodics of Customs Valuation to be approved by the Customs Department authorized by the Government according to the paragraph 2.6 of the Government Resolution No. 748 of 9 June 1999 in the nearest future.

Comment 2
In the Members view, Lithuania has not fully implemented Article 7 of the WTO Valuation Agreement, concerning the fall back method or valuation using reasonable means. Article 7.3 concerning written notice at the importer's request has not been implemented.

Reply:

The provisions concerning written notice at the importer's request are already incorporated into paragraph 59 of the Order of Customs Valuation of Goods approved by the Government Resolution No. 748 of 9 June 1999.

Comment 3
In the Members view, Lithuania has not implemented fully Article 8 of the WTO Valuation Agreement, concerning the additions to the price actually paid or payable in determining transaction value. Annex I, Note to Article 8.1(b)(ii), Point No. 4 and Annex I, Note to Article 8.1(b)(iii) are not implemented. Additionally, §29 in Resolution No. 748 appears to incorrectly implement Annex I, Note to Article 8.1(c). Lithuania should re-examine the language of §29 and make any necessary correction.

Reply:

Annex I, Note to Article 8.1(b)(ii), Point No. 4 of the WTO Valuation Agreement is already incorporated into the Draft Methodics of Customs Valuation to be approved in the nearest future by the Customs Department authorized by the Government according to the paragraph 2.6 of the Government Resolution No. 748 of 9 June 1999.

Annex I, Note to Article 8.1(c) is already implemented by Article 33.1(3) of the Customs Code.

The text of paragraph 29 of the Order of Customs Valuation of Goods approved by the Government Resolution No. 748 of 9 June 1999 corresponds to the text Article 157.1 of the Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down the provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code.

Comment 4
In the Members view, Article 11 of the WTO Valuation Agreement concerning the right of appeal is only partially implemented, as it lacks assurance that such an appeal is without penalty. Please let the Members know where the rest of these provisions can be found.

Reply:

According to the Article 7 of the Administrative Law any person can be penalized for the administrative offence only if the grounds and procedure for it is established by the Law. Lithuanian legislation has no provisions according to which any person could be subject to a fine or threat of fine merely because he chose to exercise his right of appeal (see the explanation of the meaning of expression without penalty provided in Note 2 to Article 11 of the WTO Valuation Agreement). Therefore, in our view, there is no need to repeat this general legal principle in the Customs legislation or legislation governing the order of Customs valuation of goods.

Comment 5
In our view, Lithuania has not implemented Article 12 of the WTO Valuation Agreement, concerning transparency.

Reply:

According to the Law on the Order of Publishing and Entry into Force of Legal Acts of 6 April 1993 all laws, regulations and administrative rulings of general application shall be officially published in the Official Gazette, as it is already explained in paragraph 170 of Working Part Report (WT/ACC/SPEC/LTU/8/Rev.5). Having been published in the Official Gazette, legal acts enter into force on the following day, or on a later date stipulated in the published legal act. Therefore, in our view, again there is no need to repeat this general principle in the Customs legislation or legislation governing the order of customs valuation of goods.

Comment 6
As noted above, concerning Article 14 of the WTO Valuation Agreement, Lithuania has failed to implement some of the Interpretative Notes set forth in Annex I of the WTO Valuation Agreement. Article 14 of the WTO Valuation Agreement stipulates 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. Thus, the text of the Interpretative Notes must form part of the implementing legislation.

Reply:

As it was already explained in the paragraph 74 of Working Part Report (WT/ACC/SPEC/LTU/8/Rev.5) and mentioned in the answer of the Question 16, other documents and Replies to Comment 1 and Comment 3, Lithuania has incorporated the Interpretative Notes set forth in Annex I of the WTO Valuation Agreement. There are missing only some examples of customs valuation methods (provided in the Agreement only as the examples) that are not essential. Nevertheless, they will be also incorporated in the Methodics of Customs Valuation to be approved by the Customs Department in the nearest future.

Comment 7

Lithuania has not implemented fully Article 15 of the WTO Valuation Agreement, which concerns definitions. Specifically, Lithuania has failed to implement Articles 15.1 and 15.2 (d), and Annex I, Note to Article 15.4.

Reply:

Article 15.1(a) of the WTO Valuation Agreement is implemented in Article 29 of the Customs Code. According to the Article 2.14 of the Customs Code importation is the act of bringing goods into the Customs territory of the Republic of Lithuania. Taking into account that the term Customs territory of the Republic of Lithuania is used in Articles 29 to 37 of the Code, in our view, there is no need to define Lithuania or the Customs territory of Lithuania as a country of importation (Article 15.1(b) of the WTO Valuation Agreement). Article 15.1(c) of the Agreement is implemented in paragraph 2 (1st definition) of the Order of Customs Valuation of Goods approved by the Government Resolution No. 748 of 9 June 1999. Article 15.2(d) of the Agreement is also implemented in paragraph 2 of the same Order (definitions of identical gods and similar goods). Article 15.4 is implemented in Article 30.8 of the Customs Code and the term person is defined in Article 2.1 thereof.

Comment 8

Article 37 of Lithuania's Customs Code does not appear to be based on the WTO Valuation Agreement. It contains a provision on the valuation of perishable goods shipped on consignment which allows the importer to request valuation under a simplified procedure. This is inconsistent with the WTO Valuation Agreement. Goods shipped on consignment should be valued in accordance with Articles 2 through 7 of the WTO Valuation Agreement, which provide methods of determining the customs value of imported goods in those situations in which a value can not be determined under the provisions of Articles 1 and 8 of the WTO Valuation Agreement.

Reply:

Lithuania as an EU associated country has taken an obligation to harmonize its Customs legislation with the Community Customs legislation. Therefore, Lithuania's Customs Code is based on the corresponding provisions of the European Community Customs Code and, consequently, Article 37.2 of the Lithuania's Customs Code corresponds to the Article 36.2 of the Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code. The Article 37 of Lithuania's Customs Code foresees a possibility, that upon the request of the declarant (the WTO Valuation Agreement does not restrict the usage of such procedure) a simplified procedure can be applied to customs valuation of perishable goods, however, as far as it is still necessary to adopt secondary legislation, indicated in the Article 37, the simplified procedure is not applied in Lithuania at the moment. Whenever the simplified procedure is introduced, it will be based on Articles 173 to 177 of the Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down the provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code.

Comment 9
The Members also note that Lithuania has not fully implemented the Committee on Customs Valuation Decision 3.1 on the Treatment of Interest Charges in the Customs Value of Imported Goods. As drafted the text does not incorporate paragraph (c) of Decision 3.1. The Members encourage Lithuania to fully implement Decision 3.1.

Reply:

Decision of the Committee on Customs Valuation No. 3.1 on the Treatment of Interest Charges in the Customs Value of Imported Goods is already implemented in Article 34.3 of the Customs Code.

Rules of Origin

Question 18.
Lithuania has responded bilaterally to our questions on its implementation of Annex II of the Agreement, and has indicated that, in some cases, its law does not provide for the specific procedural guarantees incorporated in those provisions. The Members urge Lithuania to develop regulations to meet these provisions.

Reply:

Despite of that the information on Rules of Origin was provided so many times in different documents, Lithuanian delegation would like once to present relevant information, hoping, that it will make clearer all questionable issues.

As far as some questionable issues were already explained in Lithuania's answers to U.S. questions, presented in September 1999 and also Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), herewith is additional information, where the specific procedural guarantees enumerated in Annex II of the WTO Agreement on Rules of Origin in fact are incorporated in the following provisions of Lithuania's legislation:

- According to the Law on Order of Publishing and Entry into Force of Legal Acts of 6 April 1993 all laws, regulations and administrative rulings shall be officially published in the Official Gazette. Having been published in the Official Gazette, legal acts enter into force on the following day, or on a later date stipulated in the published legal act (it means that legal acts are not applied retroactively). That is applicable to all legal acts of the Republic of Lithuania. Therefore, in our view, there is no need to repeat this general principle in the Customs legislation or legislation governing the order of application of preferential rules of origin
- According to Article 4 of the Customs Code where request for a decision (including decisions concerning the preferential origin) is made in writing the decision should be made within eight working days, unless laws and other legal acts provide for another term, and a decision requiring additional information or inquiries should be made within 30 working days. Exceptionally, the Customs authorities could exceed the stipulated period by up to 10 working days. The applicant shall be informed in writing of the decision or the extension of the period necessary for the examination of the request. Therefore, the longest term allowed by the law for the examination of the request is much shorter than 150 days allowed under Annex II of the WTO Agreement on Rules of Origin.
- According to Articles 226 to 233 of the Customs Code, legal and natural persons have the right to appeal against all decisions taken by the Customs authorities including the determination of preferential origin to the Customs Department and/or to the Court.

- According to Article 8 of the Customs Code, all information which is by nature confidential or which is provided on a confidential basis is covered by the obligation of the professional secrecy. The Customs authorities have no right to disclose it without the express permission of the direct presenter of information – the person or authority. Information is communicated in accordance with the established procedure, where the Customs authorities are authorised or obliged to do so pursuant to the laws and other legal acts.

Anti-Dumping, Countervailing Duties and Safeguard Regimes

Question 19.
The Law on Antidumping of 23 June 1998 is mentioned in the Synoptic Table on progress in the adoption of legislation (document WT/ACC/LTU/36/Rev.3). Paragraph 88 of the Draft Report if the Working Party also refers to the Regulations that concern the implementation of this Law. Please submit this implementing legislation to Working Party Members for review.

Reply:
Non-official translation of secondary legislation of the implementation of the Law on Antidumping, namely:

- The procedure for determination of the normal value, the export price, their comparison and the margin of dumping;
- The procedure for the determination of domestic procedures and damage;
- The procedure for the execution of dumping investigation in a foreign country;

was submitted to WTO Secretariat in May 2000.

2. Export Regulations

Export Subsidies

Question 20.
Regarding the information provided in paragraphs 97 and 98 of the Draft Report, please provide more detailed information on the type of loan programmes (LDA & LEID), e.g., what are the specific terms of the loans and who are the recipients of the loans. In addition, please describe whether the loans are contingent upon export performance or on the use of domestic over imported goods, as detailed in Article 3 of the WTO Agreement on Subsidies and Countervailing Measures.

Reply:
Firstly, Lithuanian delegation would like to stress, that in paragraphs 97 and 98 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5) there is no reference made to Lithuanian Development Agency (LDA) as a provider of loans. Factually, as it was explained in paragraph 98 of Working Party Report, the objective of LDA was to provide comprehensive information on investment opportunities, conditions and procedures and to promote exports of Lithuanian goods and demand for Lithuanian services. The LDA's main functions, as it was mentioned in the same paragraph 98 of Working Party Report were to facilitate business partnerships and assist in contracts with Lithuanian authorities and business organizations; to analyze and provide information to Lithuanian exporters and service providers on foreign market conditions; to establish Lithuania's trade representation offices abroad; to prepare, implement and monitor trade development programmes to ensure their consistency with WTO rules; to study issues affecting trade activities and formulate recommendations to Lithuanian authorities; to consult State, public and private institutions on foreign trade issues; and to provide education and training to the foreign trade community in Lithuania.

Further, referring to Insurance of Lithuanian Export and Import (LEID), it should be noted, that LEID's only activity is insurance of loans (not granting of loans) for small and medium business investment projects and insurance of short term loans for replenishment of working capital. The recipients of insurance of loans are business entities registered in Lithuania. Terms of the insurance are the following: the duration of insured loan must be up to 12 months; the business entity shall invest not less than 15 per cent of its own assets into the investment project; the insured loan must be used only for the purposes for that it was insured; insurance premium depends on the insurance risk factors and insurance rate can vary from 1.1 to 11 per cent.

In addition, Lithuanian delegation would like to stress that aforementioned insured loans are not contingent upon export performance or on the use of domestic over imported goods.

Question 21.
Please provide more detailed information on the Export Promotion referred to paragraph 99 of the Draft Report. What exactly are the programmes offered and what type of benefits is provided?

Reply:

Additionally to what was already explained in the paragraph 99 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), we can add, that the export promotion programmes could be described as an assistance in developing product image, participating in trade fairs and exhibitions, presenting Lithuanian food products in new markets, providing information on existing markets, analysis of the production of agricultural and food products in Lithuania and abroad, information on trade regulation and business opportunities, conducting feasibility studies for Lithuanian products entering foreign markets, finding potential importers and sourcing local suppliers, national branding for segmented and targeted markets, export marketing, etc.

3. Internal Policies affecting Trade in Goods

Technical Barriers to Trade, Sanitary and Phytosanitary Measures

Standards and certification

Question 22.
The Members note that work is further ahead on TBT than SPS, and the Members look forward to receiving the rest of the documentation in the SPS area to complete our review. Concerning TBT issues, in the check list of TBT requirements contained in document WT/ACC/LTU/42 (in Lithuania's delegation opinion check list of TBT requirements contained in document WT/ACC/LTU/41) Lithuania states that non-discrimination language is being developed for point 5 and 6 of the Procedures for Information Exchange within the Field of Standards, Technical Regulations and Conformity Assessment Procedures. When does Lithuania anticipate submitting this language for review by members?

Reply:

As it was already indicated in Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), Lithuania's answers to U.S. questions, presented in September 1999, and document Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations, provided in April 2000, Lithuania's legal acts fully comply with the requirements of WTO Agreements on SPS and TBT. All necessary legislation has been adopted and all the obligations imposed by these two Agreements were implemented. Furthermore, the translation of all necessary legislation was submitted to WTO Secretariat, with the exception of Law on Food and Law on Standardization that were adopted in April 2000. However, the draft laws were submitted to WTO Secretariat correspondingly in October 1999 in August 1999.

It should be stressed, that all necessary WTO TBT requirements are already fully incorporated in Lithuania's legal acts and Lithuanian legal acts, in our view, are fully compliant with the requirements set in the WTO Agreement on TBT.

However, important to note that the supplement to Procedures for Information Exchange within the Field of Standards, Technical Regulations and Conformity Assessment Procedures was already submitted to the Government for consideration, while after confirmation it will be submitted to the WTO Member countries in a due course. Herewith, we present the draft supplement of the point 5 of the Procedures: Lithuanian Standardization Department and other State institutions shall ensure, that the standards, technical regulations and conformity assessment procedures to the products imported from the WTO Member countries shall be applied no less favorably, than to the products of the Lithuanian producers or to the products imported from any other third country.

Question 23.
Concerning Law on Products Safety: Who are the experts who will determine product safety?

Reply:

As it is explained in paragraph 118 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), Law on Products Safety determined the general requirements for food and non-food products safety, the basis for imposition of SPS regulations, and the general principles for the operation of market surveillance system.

The National Nutrition Centre at the Ministry of Health is responsible for approval of safety limits for foodstuffs. The State Veterinary Service approves the safety limits for veterinary products and raw materials as well as foodstuffs of animal origin. The State Plant Protection Service at the Ministry of Agriculture approves the statutory limits for phytosanitary.

The above mentioned institutions are responsible for safety control that is carried out in the market, enterprises and on the border.

The samples of food products are checked in the laboratories. Seven laboratories at the Ministry of Health, one laboratory at the State Veterinary Service and independent laboratory Labtarna perform food analyses.

The samples of non-food products are checked in the State Quality Inspection and the State Public Health Centre.

Question 24.
Apart from the legislation already in place, will additional implementing legislation be needed to meet TBT obligations? If so, please identify them and indicate when they will be implemented.

Reply:

As it was already indicated in Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5), Lithuania's answers to U.S. questions, presented in September 1999, document Summary description of the adoption by Lithuania of the remaining legislation as envisaged during the accession negotiations, provided in April 2000, and the Synoptic Table showing the progress in adoption of legislation (last version of 5 April 2000) Lithuania's legal acts, in our view, fully comply with the requirements of WTO Agreement on TBT. The Law on Standardization in April 2000 had finalized the adoption of TBT legislation. No additional implementing legislation is needed to meet TBT obligations.

Question 25.
Concerning shelf life requirements applied to imports, the Members have reviewed the shelf life regulations contained in Resolution No. 137 and seek clarification on the following points:

Please describe the history and purpose of this Government Resolution.

Please outline the provisions of the Resolution and describe how they are applied, in practice to imports? Is this intended to be a temporary or permanent measure? Are these requirements intended to provide assurances of food safety or product quality? Are the food products listed in table 11 of WT/ACC/SPEC/LTU/8/Rev.5 subject to shelf-life requirements? What other products are covered?

Given the arbitrary nature of the shelf-life requirements applied to shelf-stable products, please explain how this regulation is consistent with the WTO Agreements on TBT and SPS, e.g., what studies has Lithuania undertaken to support the application of such requirements?

The regulation also seems counter to Lithuania's movement towards harmonization with EU food regulations.

The Members would appreciate any information Lithuania has on its application of these requirements.

Reply:

The Regulations on Labeling of Goods Sold in Lithuania adopted by Order of Minister of Economy on 16 April 1998 were developed aiming to secure the safety of products sold to consumer in Lithuania and guaranteeing that consumer will be provided with the relevant information, concerning the product safety and the risks inherent in a product throughout the normal and reasonably foreseeable period of its use. The Regulations shall apply for all food and non-food products sold to the consumer on the internal market of Lithuania.

Under development of the Regulations, the EU legal acts were observed, among them – Council Directive 79/112/EEC to the labeling, presentation and advertising of foodstuffs for sale to the ultimate consumer and its supplement directives.

The Regulations came into force on 1 January 1999 and this is supposed to be a permanent measure, however, they may be supplemented and amended upon the necessity.

Observing the Regulations, the shelf life for the products whose quality specifications change in the course of time must be indicated. The producer shall indicate the shelf life and it could be indicated in two ways: i.e. by using words use before: and the date or best before: and the date. If quality specifications of the product are not changing in the course of time, then the shelf life may not be indicated.

Question 26.
Concerning the Lithuanian Law on Food (reference paragraph 118 of the Draft Report of the Working Party) and the Law on the Amendment and Supplement to the Law on Veterinary Activities the Members would like to know the status of the proposed Food Safety Law and the Law on the Amendment and Supplement to the Law on Veterinary Activities. Have these been submitted for WP review?

Reply:

As it was already indicated in Synoptic Table showing the progress in adoption of legislation WT/ACC/LTU/36 (the latest version submitted in April 2000), the Law on Food was adopted on 4 April 2000 and right now it is in the process of translation. However, the draft Law was submitted to the WTO Secretariat in October 1999.

Law on Veterinary Activities of 17 December 1991 (with amendments of 7 October 1999 regarding the activities' compliance with the WTO requirements) was submitted to the WTO Secretariat in June 1999 and March 2000.

State-Trading Entities

Question 27.
Our distilled spirits industry is dismayed at the fact that only four Lithuanian state enterprises and only one closed-stock company (private company?) can produce ethyl alcohol products of an alcoholic strength by volume of more than 22 per cent. Such an action is contrary to the WTO philosophy that those that seek membership are willing to open their markets to world competition. The limit on limit of privatization of special purpose state enterprises in the beverage alcohol sector to 30 per cent as indicated on Table 1 (c) on page 79 would effectively freeze the current private/state owned ratio. It appears that Lithuania is attempting to protect the state sector from competition, and that it will be virtually impossible for a foreign firm to establish a joint venture with a local, private firm. This ratio of private/state participation in the beverage alcohol sector puts the distilled non-Lithuania distilled spirits companies at a distinct disadvantage versus every other industry. The Members would appreciate an explanation from Lithuania as to why it apparently is rejecting the possibility of economic interaction with other countries' alcoholic beverage producers and any future plans to liberalize its regime in this area.

Reply:

Firstly, Lithuanian delegation would not like to agree with the statement, that Lithuania is rejecting the possibility of economic interaction with other countries' alcoholic beverage producers and is refusing from future plans to liberalize its regime in this area. Furthermore, Lithuania does not think, that the established primary privatization percentage ratio contradicts to WTO philosophy. It is necessary to keep in mind that the sector is being privatized in stages.

As it was already noted answering the Question No. 4, alcohol beverages strength greater than 22 per cent in Lithuania can be produced by the enterprises having this right (licence). It should be noted, that Lithuania has already notified to WTO Secretariat the operation of such enterprises as State Trading on 4 June 1999 (WT/ACC/LTU/35). Such a system does not contradict with WTO requirements. Currently, there are four state enterprises and already two (not one, as it was indicated in the question) private companies producing alcohol beverages of strength more than 22 per cent. Recently the second private company has been granted the right to produce alcohol beverages and this is a good example, that alcohol industry is not restrictive, but only is regulated a bit stricter, what could be considered as well-grounded for such industry as production of alcohol beverages. Therefore, 2 private companies could not be considered as an exception. The establishment of the second private company and indicates, that this is not a final possible number and always there is a possibility, that this number can increase. Furthermore, the question mark that follows the words private company? is a little bit confusing. In our view, the private establishment basis of these companies does not allow us to question the private character of the companies.

The fact, that the production of alcohol beverages of strength more than 22 per cent is reserved for state and special enterprises is a limitation for domestic production of alcohol products,

but not for foreign companies. As it was already mentioned in the Reply of the Question 4, it has no impact on the importation system of such alcoholic beverages.

Moreover, Lithuania by no means is tempting in any way to protect the domestic producers from the competition from the foreign producers in this sector. We can even inform, that the competition between the foreign alcohol beverages and domestically produced ones of the strength more than 22 per cent is very severe and, actually, often domestic producers are lagging behind in this competition. Therefore, such a situation obviously does not allow to claim that non-Lithuanian distilled spirits companies are discriminated or put in a worse position in Lithuania that the local ones.

Furthermore, foreign firms can acquire shares of such enterprises and a foreign firm could establish a joint venture with a local private firm. Currently, the limit of privatization of enterprises producing alcohol beverages of strength more than 22 per cent is 30 per cent. Furthermore, it should be stressed once again, that this 30 per cent rule for privatization is set up only for the first privatization stage, while in future this percentage will certainly be increased. Many sectors of the Lithuanian economy were/are privatized in such a way. In Lithuania's delegation opinion, the determination of percentage for the first privatization stage is not a violation of WTO rules. Also it should be recalled, that further privatization in this sector depends upon the decisions of Lithuanian Government. It is necessary to keep in mind that this is a politically sensitive issue and decision of this kind of the issues can not be decided only in the framework of the WTO.

Question 28.
Does the 30 per cent rule also apply to the wine industry as well?

Reply:

It is necessary to keep in mind, that in Lithuania there are no companies producing wine only. All companies producing wine also produce and alcoholic beverages with alcohol strength more than 22 per cent (and from the previous replies it is clear that 30 per cent rule for such companies is applied). Therefore, it comes up, that the 30 per cent rule is also applied to the wine industry indirectly.

Question 29.
Since four state enterprises, with the exception of one private company has sole rights in manufacturing ethyl alcohol products of an alcoholic strength by volume of more than 22 per cent, the 30 per cent rule does not apply, except for possibly the one private sector company. Is this correct? If that is correct, then the Members reiterate the fact that the ratio of private/state participation in the beverage alcohol sector puts the distilled non-Lithuania distilled spirits companies at a distinct disadvantage versus every other industry, especially the beverage alcohol sector.

Reply:

In Lithuania's delegation opinion, the wording in the first line with the exception of one private company is used incorrectly. Adding to what was said in previous answers, it is necessary to mention that all the production enterprises if they were established would have this right under licensing, but as far as only six enterprises are currently functioning in the sector, only these have such right in manufacturing alcohol beverages strength by volume of more than 22 per cent. It should be also stressed that for such small country as Lithuania six enterprises could be considered as many.

Moreover, such a right is also reserved for two (not one), and that is already not an exception, private enterprises (Sema and Lietuviskas Midus). Recently the second private company has been granted the right to produce alcohol beverages and this is a good example, that alcohol industry is not restrictive, but only is regulated a bit stricter, what could be considered as well-grounded for such

industry as production of alcohol beverages. Therefore two private companies could not be considered as an exception. The establishment of the second private company and indicates, that this is not a final possible number of such companies and always there is a possibility, that this number can increase.

30 per cent rule for privatization applies for state enterprises, not for private companies (it is necessary to mention, that companies Lietuviskas Midus and Sema already have from 80 to 100 per cent of private capital). And this ratio does not put the non-Lithuanian distilled spirits companies at a distinct disadvantage versus every other industry (see Reply to Question 27). In addition, it should be stressed once again, that 30 per cent rule for privatization of alcoholic beverages strength greater than 22 per cent sector is set up only for the first privatization stage, which in the future will certainly be increased.

Question 30.
The Members remain convinced that Lithuania should notify as State trading enterprises its monopoly mead producers and any other firms with monopoly production privileges of beverages with alcoholic strength above 22 per cent. When combined with remaining activity licensing requirements that exempt producers from the cost of wholesale licenses and provide for higher costs for importers of such beverages, the Members believe that these special benefits justify the additional transparency requirements of Article XVII.

Reply:
Lithuania has already notified to WTO Secretariat the operation of such enterprises as State Trading on 4 June 1999 (WT/ACC/LTU/35) and that was presented in paragraph 127 of Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5).

Government Procurement

General remark: Taking into account, that the WTO Agreement on Government Procurement is plurilateral, e.g. not obligatory for the accession process, Lithuania is not obliged to meet the requirements of this Agreement before the accession. As it is noted in paragraph 135 of Working Party Report, Lithuania will be prepared initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer only within three months after the accession date. Therefore, in our view, to address these questions on Government Procurement for Member country, not for acceding country, would be the right thing.

Question 31.
On implementation of the Law of the Republic of Lithuania on Public Procurement, regarding Article 7, qualification of suppliers/contractors, do the provisions contained therein apply equally to domestic suppliers and contractors as well as foreign?

Reply:
Yes, the requirements of the Law on Public Procurement for the qualification of suppliers/contractors are equal for both domestic and foreign suppliers/contractors.

Question 32.
Please indicate how members of the Independent Commission for the Examination of Complaints Relating to Public Procurement are selected. Is this a judicial body or are the decisions rendered by this body subject to impartial judicial review?

Reply:
Following Article 40.3 of the Law on Public Procurement, the Public Procurement Office under the Government makes and approves the list of the members of the Independent Commission

for Examination of Complaints Relating to Public Procurement. Recently the list includes 63 members. The list is published in the Official Gazette.

A concrete complaint is investigated by 3 members of the Independent Commission, each being separately selected from the list by the supplier/contractor, procuring organization and the Public Procurement Office. On the basis of the order established by the Law on Public Procurement the Independent Commission investigates the submitted complaints of the suppliers/contractors against the decisions or actions of the procuring organization by which the organization did not observe the requirements of the Law and violated the rights or legal interests of the supplier/contractor. While arranging its activities the Independent Commission observes the national legislation as well as secondary legislation approved by Government Resolution No. 1467, adopted on 24 December 1999. When fulfilling its functions the Independent Commission shall investigate the complaint of the supplier/contractor and take a decision. This decision is not final. Article 42 of the Law provides that the supplier/contractor or the procuring organization has the right to appeal against the decisions of the Independent Commission in the court on the basis of the order established by the laws.

Question 33.
It is indicated that the Public Procurement Office is designated to establish the requirements for the members of the Independent Commission for the Examination of Complaints Relating to Public Procurement. Please elaborate upon this and provide information describing what these requirements are.

Reply:

While observing the requirements of Article 40.4 of the Law on Public Procurement, the Public Procurement Office approved the requirements for the members of the Independent Commission for Examination of Complaints Relating to Public Procurement and their list formation order by Order No. 53, adopted 12 November 1999.

Candidates to the member list of the Independent Commission are proposed by municipal institutions, associations or other non-governmental organizations. The member list of the Independent Commission is made and approved by the Public Procurement Office keeping in line with requirements set to members and taking into account results of qualification examinations. The list is published in the Official Gazette. The following requirements are set to candidate members of the Independent Commission: a citizen of the Republic of Lithuania may be put on the list of members of the Independent Commission, if he (she) has a university education; is not younger than 23; has a good command of the official state language; has a stainless reputation; has completed a course of lectures on public procurement and procedure of dispute settlement according to the program approved by the Public Procurement Office and has passed qualification examination of a member of the Independent Commission. A person may attempt to take the examinations without having completed the aforesaid courses too. A candidate member of the Independent Commission, who meets the requirements set, signs a pledge in which he (she) undertakes commitments to keep secret information that is considered as a secret by Lithuania's legislation or any other piece of information that is revealed in the process of dispute settlement. A person is excluded from the list of members of the Independent Commission in the following cases: on a personal request; in cases provided by our legislation and when a person is acknowledged incapable in conformity with the order established by Lithuania's legislation; after a court judgement is enforced; if a person has his (her) reputation stained; if a person fails to pass repeatedly qualification examinations; if a person fails repeatedly to attend a meeting without valid reasons and in case of a person's death.

Question 34.
Article 22, Period of Effectiveness of Tenders; Modification and Withdrawal of Tenders, allows purchasing entities to Prior to the expiry of the period of effectiveness of tenders, the contracting authority may request suppliers/contractors to extend the period of tender

effectiveness until the fixed deadline, without exceeding the time limit specified in paragraph 1 hereof [no more than 90 days after final deadline to receive tender offers]. Article 22 also mentions that any supplier who fails to respond to the request to extend the period of effectiveness of tenders, to extend the period of tender securities, or to provide a new tenders securities within a six day period; shall be considered to have refused the request to extend the period of effectiveness of its tender and to have withdrawn its tender. Is this intended to be applied equally to both domestic and foreign suppliers and contractors?

Reply:

Yes, provisions of Article 22 of the Law on Public Procurement concerning alteration of periods of effectiveness of tenders as well as all other provisions of the Law shall be applied to both local suppliers/contractor and suppliers/contractors from foreign states on equal terms.

Question 35.
The Members note that Article 21 allows for a minimum time period for the submission of tenders of not less than 30 days from publication of the invitation to tender in the information supplement of the Official Gazette and in cases where the tender is advertised in international publications, a minimum of 52 days. Please explain if foreign suppliers are eligible to bid upon tenders advertised in the Official Gazette.

Reply:

Article 12 of the Law on Public Procurement provides for that the procuring organization shall publish invitations to participate in the procurement procedure every time when wishing to award a contract by an open, restricted or negotiated procedure or by request for quotations. Therefore, in the case indicated in Article 21.1, when the notice of the prepared open tender is published in the Official Gazette, any potential supplier/contractor may participate in the tender, including also suppliers/contractors from foreign countries. The procuring organization shall not have the right to reject a tender only for the simple reason that it has been submitted by the supplier/contractor from a foreign country. The reasons for rejecting tenders are defined in Article 26.2.

Question 36.
The Members note that Articles 27 and 32 allow for the use of restricted invitations and sole source bidding in the case where excessive numbers of interested suppliers are known to be bidding upon contracts. In such cases, how is it determined which suppliers would receive restricted invitations or be invited to bid? How are determinations made regarding what is an excessive number of bidders?

Reply:

When choosing the restricted procedure for the procurement tender Article 27, the procuring organization shall have to evaluate whether the supply of the procured object is competitive in the market and what costs will be required to execute evaluation of tenders. Information about arrangements for the restricted procedure tender shall be published in the manner provided by the Law. No less than ten suppliers/contractors meeting the qualification requirements are selected according to the requirements set forth in the pre-qualification documents. Where during the first round of the procedure applications of less than ten suppliers/contractors are received, the procuring organization shall invite to the second round all the suppliers/contractors who submitted applications and meet the qualification requirements set forth by the procuring organization and shall send them invitations to tender.

Contrary to the case of applying the restricted procedure of tender or any other method of public procurement, the method of procurement from single source of supply shall not be openly announced. The Law sets that procuring from the sole source (Article 32) shall be possible only under the certain specific conditions, for example, if goods, works, or services shall be provided/performed, exceptionally by the specific supplier/contractor or by the supplier/contractor, who shall be conceded the sole rights for the production/performance of goods, works or services hereof, and no other alternative shall exist, etc.

Question 37.
Article 37 establishes a five day deadline for the submission, in writing, of a claim. In practice, does the current five day time limit afford suppliers sufficient time to submit claims?

Reply:

In case the supplier/contractor shall not lodge or shall be late in lodging the claim with the procuring organization within the term, established in Article 37.1 (within 5 days from the day the supplier/contractor learns or should have learned about the infringement of his legal interests), he shall be conceded the right to lodge the claim with the Public Procurement Office, which shall arrange it review in the Independent Commission.

Question 38.
Please provide clarification regarding the differences between what constitutes a claim in Article 37 and complaints in Article 38.

Reply:

Under the Law on Public Procurement claims shall be reviewed by the procuring organization. Article 37 sets that the claim may be lodged with the procuring organization, which shall aim at re-creation of the supplier's/contractor's rights or rehabilitation of the infringement of his legal interests by mutual agreement. This meets the requirements of the provisions of the EU Directives, regulating the application of the review procedures - to take, at the earliest opportunity and by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned.

Complaints, by which the supplier/contractor appeals against the actions and decisions of the procuring organization, if he believes that his rights or legal interests have been infringed, shall be reviewed by the Independent Commission for the Dispute Settlement in Public Procurement. The aforementioned Commission observes the Order and Conditions for the Review of Complaints and the Removal of Representatives of the Independent Commission for the Dispute Settlement in Public Procurement from the Dispute Settlement, adopted by the Government Resolution No. 1467 of 24 December 1999. The majority of votes shall adopt the decisions of the Independent Commission.

Transit

Question 39.
The Members note that one of the customs charges listed by Lithuania in Table 5 in document WT/ACC/SPEC/LTU/8/Rev.5 is a 8 litas per kilometre charge for the security of goods carriage through customs territory to cover the expenses of issuance of corresponding documents and for the services of the police ensuring security of goods carriage. Is this charge mandatory for all trade in transit through Lithuania? What type of trade, e.g., what type of products and in transit to where, is normally covered by this charge? What is the typical total cost of this service fee for a single shipment of goods?

Reply:

Due to a high level of risk related to customs transit violations, a special regime is being applied for certain goods. Alcoholic beverages, tobacco goods and sugar have to be carried by road only by closed and sealed means of transport, with police escort, by the prescribed routes and only through the prescribed frontier customs offices. These goods are subject to shorter transit terms.

So, the fee for the police escort should be paid only in cases when alcoholic beverages, tobacco goods and sugar are transported by road between two Customs offices. This requirement is applied irrespectively of the location of offices of departure and destination (inland or frontier) and of the route of transportation of the goods. However, if the goods are transported under cover of TIR Carnet, the police escort is obligatory only in cases when the amount of TIR guarantee (50,000 USD) does not cover the amount of import duties and taxes to which the goods in transit are liable. Taking into account that the distance to be covered crossing in transit the territory of Lithuania is not longer than 200 to 300 kilometres, the total cost of the escorting of one lorry carrying above-mentioned goods does not exceed 160-240 litas (40-60 USD).

Agricultural Policies

Question 40.
Please provide the terms of the soft loans referred to in this section. In addition, please describe whether the loans are contingent upon export performance or on the use of domestic over imported goods, as detailed in Article 3 of the WTO Agreement on Subsidies and Countervailing Measures.

Reply:

The soft credits and loans mentioned in the paragraph 141 of the Working Party Report (WT/ACC/SPEC/LTU/8/Rev.5) were (at 5 per cent annual interest) allocated to farmers for the purchase of equipment and machinery, and for improvement of animal breeds and their productivity.

Since 1995 to 1996 the inflation was in a high level and this was related to the lack of working capital in the processing enterprises of agriculture products. Therefore, processing enterprises were not able purchase agriculture products from farmers. Soft credits were allocated to processors for the purchasing of agriculture products also avoiding bankruptcy of processing enterprises. Therefore, processors used the soft credits to cover their debts to the farmers for the earlier purchased agriculture products. In addition, soft loans were issued for agro-service enterprises that developed co-operation and agro-service, for legal and natural persons who have made contracts with farmers concerning the services rendered, and, finally, for co-operatives which produced, processed and sold agriculture products and services rendered in the agriculture sector.

Since 1997 the application of the soft credits and loans were ceased. Though, the order of the Minister of Agriculture and the Minister of National Economy of 29 March 1999 On the payment procedure of the interest rate was passed, the soft credits were used only to compensate part of interest rate for the long-term loans allocated to farmers for purchase of inputs.

The soft credits and loans were not contingent upon export performance or on the use of domestic over imported goods.

Trade-Related Intellectual Property Regime

Question 41.
Page 3 and page 16 of document WT/ACC/LTU/42 provide citations to the provisions of various intellectual property laws that provide for national treatment for foreign nationals. No information is provided with respect to national treatment in connection with protection of geographical indications and undisclosed information. Please provide references to the provisions of relevant laws providing national treatment for those two forms of intellectual property.

Reply:

The document WT/ACC/LTU/42 provides citations for national treatment from different laws regulating the protection of intellectual property, because in such areas as patents, industrial design, trademarks, etc. the separate laws have been adopted and the all WTO TRIPS provisions, including national treatment specified in appropriate laws.

The geographical indications and undisclosed information is covered by the common Law on Competition, which is applied to all areas of economy without exception. Therefore, there is no clear reference to national treatment concerning geographical indications and undisclosed information in aforementioned law. But this does not mean that national treatment is not applied for geographical indication and undisclosed information.

It should be also noted, that the new Law amending the Law on Trademarks and Service Marks was presented to the Lithuanian Government for consideration, where the additional provisions will be introduced concerning the usage of geographical indications. It is necessary to mention that the translation of this new Law amending the Law on Trademarks and Service Marks was already submitted to the WTO Secretariat.

Question 42.
Regarding the obligation in Article 6b of the Paris Convention (page 8), the right hand column of WT/ACC/LTU/42 says that Article 4.2 of the Law on Trademarks and Service Marks provides that a sign that is identical or confusingly similar to a mark which is well known and belongs to other legal or natural persons cannot be registered. Please explain how the ownership by other legal or natural persons is established. Is responsibility for determining this ownership placed on the State Patent Bureau or must the owner of the well-known mark oppose the registration and demonstrate its ownership?

Reply:

The owner of the well-known mark can oppose the registration (Law on Trademarks and Service Marks Article 4.2, 12). If the owner opposes the registration on this ground, he must to prove that he is the owner of the well-known trademark. For this reason he has to have the court decision recognizing that he is the owner of the well-known mark. It means that the owner of the well-known mark has to prove his ownership through the court procedure. State Patent Bureau does not carry out a search for prior rights e.g. there is no *ex officio* examination for prior rights in Lithuania.

Question 43.
Regarding Article 25 of the Law on Trademarks and Service Marks says that invalidation or revocation of a trademark registration will not be allowed if the holder of a prior mark has knowingly tolerated the use during five years of a later mark that had been the subject of a bona fide application. Does this Article apply only with regard to a registered trademark or are well-known marks intended as well? Does the word knowingly mean having actual knowledge? In the event of a dispute, how would the term bona fide application be interpreted? Have there been any cases in which this Article has been applied?

Reply:

Article 25 of the Law on Trademarks and Service Marks applies only for the registered trademarks. Furthermore, the new amendment of the Law was already presented to the Lithuanian Government for consideration, where the specific provisions indicate that the owner of a mark, which is recognized in Lithuania as well known, will have the right to prohibit the usage, which is made without his consent, of any sign in the course of trade, which is related with the reproduction, limitation, or translation of a well known mark and is liable to be confused in relation to goods which are not identical to or similar with those for which that well known mark is used. Necessary to mention, that the Law also foresees that it is not necessary to register a well known mark in order to get a protection in Lithuania from the infringement the rights of the owner of the well known mark (see also Reply to Question 42).

The word knowingly means having the actual knowledge. We have not yet cases in which this Article has been applied and we can not comment how the term *bona fide* would be interpreted in the courts.

Question 44.
In regard to Article 8 of Paris, document WT/ACC/LTU/42 (page 10) states that Article 4.3 prohibits registration of a sign that is identical or confusingly similar to firm names or signboards of such firms belonging to other natural persons or legal entities that acquired the right in the names or means before the date of application or priority filing date of the trademark application. Please describe the factors that are considered in determining whether other natural persons or legal entities acquired the right in the names or means.

Reply:

The factor determining the right in the firm names is registration of the firm name in Lithuania or the usage of such name in Lithuania. The factor determining the right in the signboards is the use of such signboards.

Question 45.
Regarding Articles 10 and 10b of the Berne Convention, document WT/ACC/LTU/42 (page 19) lists several provisions of the Law on Copyright and Related Rights providing for free uses of works. Please describe in detail the extent of reproduction permitted for teaching purposes under Article 22; that permitted for works by libraries and archives under Article 23; and that permitted for information purposes under Article 24. Please also describe in detail the relationship between these authorizations and the provisions of Article 19 of the Law.

Reply:

Law on Copyright and Related Rights Article 22.1.1 provides free reproduction of a work for teaching and scientific research purposes: it shall be permitted without the authorization of the author of a work or any other owner of copyright in this work, and without the payment of remuneration the reproduction for teaching and scientific research purposes of short published works or a short extract of a published work, by way of illustration, in writings, sound or visual recordings, provided that such reproduction does not exceed the extent justified by the purpose.

Law on Copyright and Related Rights (Article 23.1) provides free reprographic reproduction of works by libraries and archives. Without the authorization of the author or other owner of copyright in a work, any library or archive may, for non-commercial purposes, reprographically make a copy of such work, where:

- the work reproduced is a published article or any other short work or short extract of a writing, with or without illustrations, and the purpose of such a reproduction is to

meet the request of a natural person, provided that the copy will be used solely for the purpose of personal studies, education or scientific research, and the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions;

- a copy of work is made for the purpose of preservation or replacement of a copy that is lost, destroyed or rendered unusable, or for the purpose of replacement of a lost, destroyed or unfit for use copy of another similar library or archive, if it is impossible to obtain such a copy by other acceptable means, and if the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

Law on Copyright and Related Rights (Article 24.1) provides free use of works for information purposes. Without the authorization of the author or other owner of copyright in a work shall be permitted:

- the reproduction in newspapers, radio and television broadcasts, repeated and rebroadcast broadcasts and programmes, or other mass media, of an article published in a newspaper or other periodical on current economic, political or religious issues, or of a broadcast work of the same character. This permission shall not apply where the exclusive right to authorize or prohibit the reproduction, broadcasting, retransmission, or other communication to the public of a work is retained by the author or other owner of copyright;
- the use of literary and artistic works the place of performance or display of which renders information on public or current events in the press, radio or television, provided that such a use is motivated for informatory purposes and that it constitutes additional information material;
- use in newspapers or periodicals, as well as broadcasting, retransmission, cable retransmission or other communication to the public, for the purpose of reporting current events, of political speeches, reports, lectures or other works of a similar nature delivered in public, as well as speeches delivered during court proceedings, to the extent justified by the purpose.

Article 19 of the Law on Copyright and Related Rights provides conditions of limitation on author's economic rights. Any limitations on economic rights shall be permitted exclusively to the cases provided for in this Law. Article 22, Article 23 and Article 24 provide certain special cases: the reproduction of a work for teaching and scientific research by way of illustration (Article 22), reprographic reproduction of a work in library or archive for the purpose of preservation or replacement of a copy that is lost, destroyed or rendered unusable (Article 23); the reproduction in mass media articles published in a newspaper or other periodical on current economic, political or religious issues; the use of works the place of performance or display of which renders information on public or current events in the press, radio or television (incidental or accidental uses of works); the use in mass media for the purpose of reporting current events, of political speeches, reports or other works of a similar nature delivered in public, as well as speeches delivered during court proceedings (Article 24).

These limitations and exceptions (provided in Article 22, Article 23 and Article 24) do not conflict with a normal exploitation of a work and do not prejudice the legitimate interests of the author or other owner of copyright (Article 19): the reproduction does not exceed the extent justified by the purpose for teaching and scientific research (Article 22); the act of reprographic reproduction in library or archive is an isolated case occurring, if repeated, on separate and unrelated occasions (Article 23). In all cases the name of author and the source used shall be indicated.

Question 46.
Regarding Article 18 of the Berne Convention, document WT/ACC/LTU/42 (page 20) cites Article 72.1 of the Law on Copyright and Related Rights as applying the Law to all literary, artistic and scientific works and objects of related rights which, at the moment of entry into force of the Law, have not fallen into the public domain due to the expiration of the term of protection previously granted. Article 18 of the Berne Convention requires that protection be provided to all works that have not fallen into the public domain in the country of origin through the expiration of the term of protection. Please describe in detail how Article 72.1 of the Law on Copyright and Related Rights complies with that requirement.

Reply:

The Bern Convention for the Protection of Literary and Artistic Works has entered into force, with respect to Lithuania, on 14 December 1994, and on that date Lithuania has become a member of the Bernie Union.

Under Article 18.1 of the Bernie Convention and under Article 536 of the Civil Code in force at that moment the term of protection is the life of the author and fifty years after his death. After the entrance into force of the Law on Copyright and Related Rights (1999) the provisions on Copyright and Related Rights incorporated in the Civil Code were repealed. Under Article 30.1 of the Law on Copyright and Related Rights the term of protection was extended to the life of the author and seventy years after his death. Article 72.1 provides for that the said Law shall apply to the authors, if at the moment of its entrance into force the term of protection of their rights to literary, scientific and artistic works, which was active before the entrance of this law, has not expired. It is understood that the term of protection is not extended to the works that have fallen into the public domain before the entrance of the Law on Copyright and Related Rights if the term of fifty years after the death of the author has expired. However, the wording of Article 72.1 of the said Law does not stipulate that the term expires if the works have fallen to the public domain in the territory of Lithuania. It is understood if the term of protection in the country of origin (foreign country) was shorter or longer than in Lithuania before the entrance of the said Law and it has not expired, i.e. the works have not fallen in the public domain in the country of origin, the term of protection in the territory in Lithuania extends up to seventy years after the death of the author. Thus, Article 72.1 of the Law of the Copyright and Related Rights complies with Article 18 of the Bern Convention.

Question 47.
In regard to the requirements of Article 32 of the TRIPS Agreement (document WT/ACC/LTU/42 page 32), please describe how and under what authority judicial review of decisions can be made under Articles 38 and 45 of the Patent Law revoking or invalidating a patent.

Reply:

According the recommendations of the WTO experts and TRIPS requirements, Article 38 and Article 39 of Patent Law have been replaced (Draft Law already submitted to Parliament, expected time of adoption: June 2000). The new versions of Articles 26, 39, 40 foresee that the judicial review of decisions can be made under the following circumstances:

- public interest, national security, health or development of the national economy; or
- a court determined that the manner of exploitation by the patent owner or his licensee is anti-competitive, the Government may decide that the state (municipal) institution, natural or legal person may exploit the invention without the consent of the patent owner. The exploitation of the invention shall be limited to the purpose for which it was authorized and shall be subject for the payment to the patent owner of an adequate remuneration.

In the case do not observing of regulations of using the authorization, or do not satisfied of remuneration, the patent owner, has the right to file a suit to the court.

Invalidation of the patent is regulated under Article 45 of the Patent Law. On the ground if invention is not patentable within the meaning of Articles 2 to 5 of Patent Law any person concerned the court may invalidate a patent. The suit may be filed with the Vilnius County court. Unfortunately, we do not have yet a practice of enforcement of Article 45. At present there is only one case in Supreme Court. This case is not over yet.

Question 48.
In regard to Article 39.2 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 34) provides a definition of commercial secret which includes the phrase except for information that cannot be considered a commercial secret under the laws of the Republic of Lithuania. Please describe in detail what information meets the definition cannot be a commercial secret under Lithuania's laws and provide citations to the relevant laws.

Reply:

As it was already mentioned in document WT/ACC/LTU/42 and pursuant to Article 3 of the Law on Competition Commercial secret means technical, technological, commercial or organizational information belonging to the undertaking and not disclosed publicly, the confidentiality of which is protected by the undertaking, except for information that cannot be considered as a commercial secret under the Lithuanian laws. Statement of this definition except for information that cannot be considered as a commercial secret under the Lithuanian laws means that according to some laws information that is provided by undertaking to certain institutions becomes disclosed and publicly accessible. For example:

The Law on Public Trading in Securities requires providing the following information:

Article 4. Registration of Securities

2 The issuer who intends to register securities must file the following documents with the Securities Commission:

…

2) prospectus (if the securities are intended for private placement, the memorandum, an abridged variant prospectus, may be submitted),

…

3. According to the rules approved by the Securities Commission, the issuer must provide in the prospectus (memorandum) financial statements, disclose information about its activities and the issued securities and those about to be issued, about the managing bodies and contracts entered into by their members with the issuer, about the persons connected with the issuer, as well as persons who are the issuer's partners, and also any other information provided for by the rules. The prospectus must also contain findings of an independent auditor acting under the legal acts regulating the activities of auditors concerning the compliance of the issuer' accounting and financial accountability with the Lithuanian laws and general principles of accounting.

…

7. The Securities Commission must publish the data on the class, volume and price of the issue of registered securities in the Official gazette as well as provide the investors with the opportunity to familiarize themselves with the prospectus (memorandum). The issuer must provide the opportunity to

familiarize themselves with the documents filed for registration to all the persons who are willing to do so.

Article 5 foresees regular disclosure of information, and Article 6 foresees disclosure of information concerning stock events.

The Law on the Register of Enterprises requires providing the following information:

Article 5. Registration Documents

The following documents must be lodged with the Registrar:

…

3) contracts (or copies thereof) of the incorporation of a public or private company, or the formation of an association of enterprises, or a partnership;

4) account of the incorporation of a corporation, and a statement on the account by the inspector of the corporation;

5) balance sheets of a public or private company if required by the laws of the Republic of Lithuania;

Article 7.1 Use of the Documents and Information of the Register states:

All legal and natural person shall have the right to use the Register documents and information for a prescribed fee.

Question 49.
In regard to Article 39.3 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 35) provides references to sections of Lithuania's Patent Law and states that protection of registration data is linked to the patent term. Absent from the information is an explanation of the manner in which data submitted to those authorities in the Republic of Lithuania that approve the marketing of pharmaceuticals and agricultural chemicals is protected from unfair commercial use and for what period. Please describe in detail how those authorities protect data submitted to them to obtain marketing approval and for what period. Please provide citations to relevant laws.

Reply:

As it was already explained in document WT/ACC/LTU/42, Patent Law among other products also covers protection of pharmaceutical and agricultural chemical products. The document also provided all required information concerning the order and period of protection of data.

Additionally, the basis for the registration of medicines is established by the Law on Medicines and also by its secondary legislation. In accordance with this Law, the State Medicines Control Agency at the Ministry of Health (SMCA) shall conduct the registration of medicines and shall approve the Rules of Registration of Medicines.

SMCA Regulations provide that the SMCA shall ensure confidentiality of documentation and information submitted by agencies of Lithuania, enterprises/applicants, foreign pharmaceutical companies and firms or their representatives in Lithuania, if this is required by the applicant. This provision is also included in the Regulations of the SMCA divisions responsible for the registration of medicines (one of the SMCA division is the Medicines Registration Bureau (MRB) consisting of

three subdivisions: Medicine Registration Commission, Commission for Bioproducts and Diagnostic items, Commission for Food Products and Cosmetic Supplies):

- under the MRB Regulations, the MRB shall ensure confidentiality of the documentation and information submitted by the applicant and the security of documentation;
- in accordance with the Regulations of the MRB subdivisions, they must also ensure confidentiality of the documentation submitted by the applicant about the medical product to be registered.

On 3 December 1999 the EMEA (European Medicines Evaluation Agency) published The EMEA Code of Conduct accompanied by Annex 2 called EMEA Guidance on Confidentiality and Discretion. Due to the fact that the Rules of Registration of Medicines and regulations are being drafted in accordance with the EU legislation, the provisions of this document will be incorporated in our new legislation.

Question 50.
In regard to Article 41.3 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 36) provides information on the evidence on which judges' base decisions but states that there is no preference given written evidence. Article 41.3 of the TRIPS Agreement does not deal with the nature of the evidence that should be considered in reaching a decision on the merits of a case. Article 41.3 provides that judges' decisions should preferably be in writing, providing the reasoning for their decisions. Please describe in detail how judges decisions in a case are communicated to the parties and the public and cite to the relevant sections of the Civil Code or other legal authority.

Reply:

Article 10 of the Code of Civil Procedure (CCP) provides that all courts hear cases in holding public proceedings. By a motivated court ruling the proceedings may be closed for public when it is necessary to protect the secrecy of a person, the privacy of his life or property, as well as when a case heard in public may disclose a state, a professional or a commercial secret. The resolution part of a decision is always pronounced in public. Similar provisions are contained in Article 16 of the Code of Criminal Procedure.

According to CCP Article 213 judge's decisions are pronounced orally for the parties taking part in the procedure. If the party is not participating in the procedure the copy of the decision will be send to this party (Article 229 of CCP). Article 10^2 of the CCP provides that all the materials of decided civil cases, except the materials of the cases heard in closed court proceedings, are public and anyone including persons who did not participate in the proceedings have access to them. They also have the right to copy the material. Such right is acquired when a decision or a ruling to discontinue the case or to dismiss the case comes into effect, or in case the case may be heard in the cassation instance, after its hearing in the cassation instance, or upon the time set for the cassation appeal has expired. Similar provisions are contained in Article 16^1 of the Code of Criminal Procedure.

Article 8.1 of the Court Law stipulates that from the 1 of July, 2000 decisions of the district Courts which has public interest will be available on Internet. The decisions of the Supreme Court of Lithuania are available on Internet from 2 of June 1999.

Article 213 of the CCP provides that after coming to a decision or a ruling in a deliberation room, the Court returns to the session room and the chairperson of the proceedings or a judge of the panel of judges pronounces the decision or the ruling. After the decision or the ruling is pronounced, the chairperson of the proceedings explains the content of the decision or the ruling, the procedure and the time for lodging an appeal. At the same time, the judge announces for the participants of the

proceedings the time for gaining access to the record of court proceedings. Similar provisions contain Article 352 of the Code of Criminal Procedure. Also, Article 286 of the Code of Criminal Procedure stipulates that the sentence is pronounced in the presence of the defendant or is read to the defendant immediately after its pronouncement.

Article 220 of the CCP provides that a decision is made by writing down the introduction and the resolution parts of the decision and by pronouncing it immediately after the completion of the hearing of the case. The description and the motivation parts of the decision are written within three days after the pronouncement of the decision. Similar provisions are contained in Article 344 of the Code of Criminal Procedure.

Article 220^1 of the CCP further states that in exceptional cases, taking into account the complexity and volume of the case, a judge (-s) by issuing a motivated ruling may postpone the making and the pronouncement of the decision for a term of time which is no longer than seven calendar days. During the period, the judge may hear other cases. By ruling to postpone the making of the decision, the Court also sets the date for the pronouncement of the decision.

Article 229 of the CCP states that not later than within three days after the giving of the decision, the Court mails the decision to the parties and to the third parties of the case, which did not participate in the court proceedings. Similar provisions are contained in Article 354 of the Code of Criminal Procedure.

Question 51.
In regard to Article 41.3 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 37) provides information regarding the Vilnius District Court's original jurisdiction over industrial property cases (with the exception of geographical indications and undisclosed information). Please describe the way in which appeals of at least the legal aspects of that court's decisions can be brought and provide citations to the appropriate laws.

Reply:

Article 17 of the Court Law stipulates that the Court of Appeal shall be considered to be of appeal instance for cases, which were investigated by the district court as of first instance. Article 18 of the Law stipulates that the Supreme Court shall be considered to be of cassation instance for the judgement, sentences, decisions and resolutions of the district courts after they come into force, as well as for cases of the Court of Appeal.

The Vilnius District Court having original jurisdiction over industrial property cases hear these cases as the court of first instance, therefore, the order of appeal is the same as to all other decisions of the courts of first instance, however the appeal are heard by the Court of Appeal. The decision of the Vilnius District Court may be appealed in accordance to the order established in the Code of Civil Procedure.

The appeal may be lodged by any of the party to the case. The appeal has to be lodged within fourteen days after the decision of the Vilnius District Court was pronounced. The appeal is to be lodged via the court, which decision is appealed. The judge of the first instance have to decide on question of admissibility of the appeal not later than three days after the appeal was presented to the court. The appeal may be declared inadmissible if:

- the appellant exceeded the time limit and did not claimed for restoration of that time limit or the claim was rejected;
- the appeal was lodged by incapable person or person who do not have a right to lodge an appeal; and
- the appeal was lodged by representative who is not granted such representation.

The judge of the Court of the first instance, by accepting the appeal, have to send, within three days after expire of the time limit for the appeal of the decision, to the persons participating in the appeal procedure the copies of the appeal and other documents annexed to the appeal and have to send to the appeal court the appeal and its annexes.

Question 52.
Regarding Article 49 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 41) states that administrative remedies should conform to the principles established in legal acts. Please describe the administrative provisions available to right holders to enforce their intellectual property rights and cite to the relevant provisions that ensure that these remedies conform to the principles of Articles 41 to 48.

Reply:

According Article 6 of the Civil Code courts and arbitration are entitled to protect civil rights. Article 4 of Code of Civil Procedure ensures a possibility to every person to bring an action in the court in order to protect his rights or interests. Law on Copyright and Related Rights provides the right of copyright holders and holders of related rights to protect their rights and interest by bringing civil action (Article 65). Article 136 of Code of Civil Procedure provides the cases concerning intellectual property should be examined in the County courts.

In the case, when indication of criminal activities arise, which are provided on Article 142 of Criminal Code (infringement of copyrights or inventor rights), the copyright holder or inventor can claim for the instituting the criminal investigation in accordance to the Code of Criminal Procedure (Article 126).

Moreover, the Article 308 of the Criminal Code provides for criminal responsibility for the usage of trademark without permission, registered in the patent bureau, for marking of produced goods and presentation for realization of such goods. The Criminal Code provides for criminal sanction for such criminal activity with fine with deprivation of right to occupy certain positions or work certain work or engage in certain activities up to three years or without deprivation of such right. If the big amount of goods were marked or if quality of marked goods has differ a lot from the goods produced by legal owner of the trade mark or if the big damage was caused to the company, the Criminal Code provides for more sever criminal sanction – deprivation of liberty up to three years with fine or only fine with deprivation of right to occupy certain positions or work certain work or engage in certain activity up to five years or without deprivation of such right.

Question 53.
Regarding Article 50.1 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 41) cites provisions of the Law on Copyright and Related Rights that deals with provisional measures and to Articles 96 to 100 of the Civil Code that provide for preservation of evidence. Please describe with respect to the forms of industrial property the provisional measures available to prevent infringement.

Reply:

In the case of industrial property infringement the Articles 96 through 100 of the Code of Civil Procedure providing the general procedure of the preserving of evidence applies. It stipulates that under the action of industrial property holder the court has the right to impose measures of provisional relief.

Provisional measures to prevent infringement of industrial property rights are provided in Law on Trademarks and Service Marks (Article 28) and in Law on Industrial Designs (Article 25). Under these articles, in according to the claim of the holder of a mark (the owner of an industrial design), the Court may adopt a decision to terminate any acts the likely performance of which may infringe the rights protected by laws.

Also, the Patent Law (Article 41) provides, that, the owner of a patent or the applicant shall have the right to institute court proceedings against any person who is performing acts which make it likely that infringement of patent or published patent application will occur. Such proceedings may not be instituted later than three years from the establishment of the fact of infringement.

Article 29 of Law on Trademarks and Service Marks provides, that the holder of a registered mark or the beneficiary of a licence may request in writing form the customs administration to withhold goods transported across the border of Lithuanian, which bear a mark which is considered by the said holder or beneficiary as infringing their rights in a mark registered in Lithuania.

Question 54.
Regarding border measures required by the TRIPS Agreement, Articles 51 through 60, document WT/ACC/LTU/42 (pages 43 to 45) provides information concerning the protection of trademarks. Please provide similar information concerning the protection provided copyrighted works at the border and any protection provided other forms of intellectual property.

Reply:

Border Measures	
Provide for suspension of release by customs authorities of goods suspected of bearing a counterfeit trademark or of being a piratical copyrighted work, either at the request of the right holder. Members are authorized to extend such protection to holders of other forms of intellectual property. (Article 51).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. Article 6 provides that the holder of an intellectual property right may lodge an application in writing with the Customs Department under the Ministry of Finance for action by the Customs authorities to take measures to protect the rights of that holder in case he is aware or suspects that goods infringing intellectual property rights are intended for the release for free circulation, outright export, re-export, application of other import and export procedures or placing in a free zone or free warehouse. According to the Article 12 where, in the course of examination carried out in performing Customs formalities for import or export procedures or placing the goods in a free zone or free warehouse it is found that there are reasonable grounds to believe that the goods are infringing intellectual property rights, the holder of the intellectual property rights, where known, shall be notified without delay about the alleged infringement of his rights. In this case the goods shall be detained for a period of five working days following the notification of the holder of intellectual property rights to enable him to lodge an application to the Customs Department for action to protect his rights.

Authorize authorities to require the right holder requesting border measures to post a bond sufficient to protect the defendant and to prevent abuse. (Article 53).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 10). Where the Customs Department takes a decision to grant the application, the Customs measures shall be initiated only upon the submission by the holder of the intellectual property rights of the security in order: 1) to satisfy claims submitted to the Customs authorities by the persons concerned in respect of whom Customs measures have been applied, if the application of such measures is terminated owing to the act or omission by the holder of intellectual property rights or where it has been established that the Customs measures had been applied in respect of the goods found to have been unreasonably accused of infringing intellectual property rights; 2) to ensure payment of the costs incurred where the detained goods were kept under Customs control.
Requires prompt notification of the right holder and the importer when action under Article 51 is taken. (Article 54).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 14.2). The territorial Customs office, to which the Customs office which has detained the goods is subordinate, shall immediately communicate the information to the Customs Department which has taken a decision to apply Customs measures, to the declarant, the applicant and the Tax Police Department under the Ministry of Interior.
Requires that Customs authorities be notified within a maximum of 20 days of the receipt of notice that proceedings no the merits have begun or the suspension is to be revoked. (Article 55).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods.. According to the Article 16 the holder of intellectual property rights must immediately notify the Customs Department of his appeal with the statement of claim to a court. Article 17.1 provides that if within 10 working days from the date of notification of the holder of intellectual property rights on the detention of goods the Customs Department is not notified of the appeal by the holder of intellectual property rights to court or of the adoption of the final decision or decision to take interim measures, the detained goods are placed under the Customs procedure or other Customs approved treatment or use under which they were intended to be placed.
Authorities must be authorized to require the right holder to compensate the importer or owner of the goods subject to border measures if goods were wrongfully detained or if proceedings leading to a decision on the merits are not begun within the allotted time. (Article 56).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 20.3). The procedure for recovery of losses and damages is governed by the Law on Copyright and Related Rights, Law on Industrial Design, Law on Trademarks and Service Marks, Patent Law and Civil Code.

Right holders must be allowed to inspect the detained goods in order to substantiate the right holder's claims. Importers must be given similar authority. Members may give the right holder the names and addresses of those involved in the importation when infringement is found to exist. (Article 57).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 14.3 –14.4). The territorial Customs office, to which the Customs office which has detained the goods is subordinate, shall, in compliance with laws and other legal acts governing the protection of personal data, public security, commercial, industrial and professional secrecy, at the request of the holder of intellectual property rights, notify him of the name and address of the declarant as well as the name and address of the consignee (where such data is known). Taking into account the conditions of Customs control, the Customs office that has detained the goods shall afford the applicant and other persons having the right to dispose the goods to inspect the detained goods and take their samples.
Establishes the conditions that must be in place if Customs Authorities are authorized to act ex officio, including the ability to ask the right holder for information at any time, the requirement to notify the importer promptly of the suspension; and the requirement that public officials be liable if they act in bad faith. (Article 58).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 14.2). The territorial Customs office, to which the Customs office that has detained the goods is subordinate, shall immediately communicate the information to the declarant. Customs Code. According to Article 7 any person involved in the export, import or transit operations must provide the Customs at their request with all information and possessed documents, related with the said import, export and transit operations. According to Article 18 paragraph 3 the Customs officials are liable for the unlawful actions pursuant to the order established by law.
Competent authorities must be able to order destruction or disposal other than by re-export of infringing goods where appropriate. (Article 59).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 18). The court having finally recognised the goods as infringing intellectual property rights shall also take a decision on the confiscation of the goods specifying which of the following actions should be performed on the detained goods: destruction; use of the goods without their release into commercial channels, ensuring the protection of the holder of intellectual property rights and without bearing by the State of any expenses incurred in connection of the use of such goods; any other measures which effectively deprive the persons concerned of the illegal trafficking of the detained goods of the economic benefits of the transaction (e.g. handing to the holder of intellectual property rights). Simply removing the trademarks which have been affixed to the counterfeit goods without authorization shall be regarded as a measure which effectively deprive the persons concerned of the illegal trafficking of the detained goods of the economic benefits of the transaction only in exceptional cases.

Members are authorized to except from border measures small quantities of infringing goods of a non-commercial nature carried in personal luggage or shipped in small consignments. (Article 60).	Draft Law on the Protection of Intellectual Property for Imported and Exported Goods. (Article 21). The provisions of this law shall not apply to goods of a non-commercial nature contained in travellers' personal luggage imported within the limits laid down by the Government in respect of relief from import duties and taxes and exported in cases when it is allowed to submit the simplified declaration.

Question 55.
Regarding Article 61 of the TRIPS Agreement, document WT/ACC/LTU/42 (page 45) cites to provisions of the Criminal Code that apply to copyright infringement and trademark counterfeiting. Please provide information on the number and kind of criminal actions that have been brought under these provisions in the past two years, indicating the nature of the crime, the number of defendants involved and the penalties assessed.

Reply:

In the past two years nine criminal proceedings were instituted against infringers for the violation of copyright and trademark counterfeiting, mostly for the production, realization and storage of counterfeited goods. When the criminal proceedings were started 42,000 units of intellectual production were taken. Necessary to mention, that when the Courts have already passed verdicts in some cases, 19,000 units of CDs were confiscated.

Moreover, 100 protocols of administrative infringement have been drawn up and about 4,000 units of intellectual production have been confiscated in such cases. Penalties inflicted amounted to about 37,000 litas.

Three civil cases were put on the trial in the country-side district courts. Two claims were satisfied, one rejected. The exact number of the administrative cases' put on the trial in the country-side courts is unknown, but there is evidence that there were more than 10 such cases.

Lithuania's district courts have passed one verdict and 18 rulings for the copyright infringement and trademark counterfeiting.

Trade Agreements

Question 56.
Does the statement in paragraph 177 of the Draft Report that The Parties of the Agreement [i.e., the FTA with Ukraine] committed to ensure free transit of goods through their customs territory mean that no transit fees are charged? Please update the information in this paragraph. Agreements are not, as a rule, notified to the WTO Secretariat. Lithuania should clarify whether an actual notification in the context of Article XXIV of the GATT, has taken place.

Has the FTA with Hungary been notified to the WTO? The Members would appreciate a statement from Lithuania that it will notify its FTA with Ukraine upon accession.

Reply:

There is no any provision in the FTA Agreement with Ukraine, that the Parties agree not to charge any transit fees for goods. Parties only agreed to ensure free transit of goods through their territories within the meaning of Article V of the GATT 1994.

FTA with Hungary has been notified to WTO by Hungary. FTA with Ukraine shall be notified by Lithuania upon its accession to the WTO.