



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 May 2013

9832/13

**JUR 256
COMER 128**

INFORMATION NOTE

from : Council Legal Service

to : COREPER (2nd part)

**Subject : Case before the General Court of the European Union
- Case T-153/13 (Et Solar Industry e.a. v. Commission)**

1. By an application notified to the Council on 27 March 2013, the above-mentioned companies have brought an action for the annulment, pursuant to Article 263 of the Treaty on the Functioning of the European Union, of the decision of the European Commission communicated by letter of 3 January 2013, No H4/JN/Ref.t13.000011, informing the applicant that it would not examine the applicant's request to be granted the status of undertaking operating under market economy conditions, filed pursuant to Article 2(7)(b) of Council Regulation (EC) No 1225/2009, in the antidumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China, opened on 6 September 2012 (AD 590).

2. The applicants also ask to declare inapplicable to the applicant as regards the present application, by virtue of Article 277 of the Treaty on the Functioning of the European Union, Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ 2012 L 344, p. 1) and, consequently, order the Commission and any interveners to pay all the costs.
3. The applicants invoke the following two grounds in support of their claim for annulment:
 - First plea: the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing and failing to respect the applicants' rights to the protection of legitimate expectations and the principle of proportionality thereby unlawfully terminating without due cause the applicants claim for market economy treatment in the context of an anti-dumping investigation.
 - Second plea: the contested decision should be annulled on the grounds that the Commission made a manifest error of assessment by infringing the principles of legal certainty and the non-retroactive application of European Union law by unlawfully terminating the applicants' MET claim thereby unlawfully terminating without due cause the applicants claim for market economy treatment in the context of an anti-dumping investigation.
4. The Director-General of the Council Legal Service has appointed Ms. Sonja BOELAERT, member of the Legal Service, as the Council's agent in this case. She will be assisted by Mr. Georg BERRISCH and Ms. Agnieszka POLCYN (Covington & Burling in Brussels).