



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 July 2013**

**11880/13**

**JUR 349  
COMER 165**

**INFORMATION NOTE**

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from : Council Legal Service  
to : COREPER (2nd part)  
Subject : **Case before the General Court of the European Union  
- Case T-277/13 (Marquis Energy LLC v. Council)**

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1. By an application notified to the Council on 31 May 2013, the above-mentioned company has brought an action for the annulment, pursuant to Article 263 of the Treaty on the Functioning of the European Union, of the Council Regulation, No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America in so far as it affects the Applicant.
2. The applicant invokes the following ten grounds in support of its claim for annulment:
  - First plea: The Commission has acted contrary to Articles 2(8), (9)5, 18(1),18(3) and 18(4) of the Basic Regulation and committed a manifest error of assessment when it refused to calculate an individual dumping margin and assign an individual anti-dumping duty, if any, to the Applicant;

- Second plea: The Commission committed a manifest error of assessment and infringed Article 2(10) of the Basic Regulation by failing to adjust the export price when calculating a dumping margin;
- Third plea: The Commission committed a manifest error of assessment and infringed the principle of non-discrimination as well as Article 3(2) of the Basic Regulation by overestimating the volume of imports of bioethanol from the US;
- Fourth plea: The Commission has acted contrary to Article 3(2) of the Basic Regulation and committed a manifest error of assessment when performing injury margin calculations;
- Fifth plea: The Commission committed a manifest error of assessment and breached Articles 1(4), 3(1), 3(2), 3(3), 3(5), 3(6), 3(7) and 4(1) of the Basic Regulation by basing its material injury determination on a Union industry that does not manufacture a like product and Articles 4(1) and 3(1) of the Basic Regulation by defining the Union industry before it defined the like product;
- Sixth plea: The Contested Regulation is based on a manifest error of assessment and is contrary to Article 3(1) of the Basic Regulation as the material injury is determined based on the data pertaining to the non-representative sample of Union producers;
- Seventh plea: The Commission committed a manifest error of assessment by concluding that other causes of material injury do not break the causal link between the targeted imports and alleged injury to the Union industry;
- Eighth plea: the Council infringed Article 9(2) of the Basic Regulation by imposing an anti-dumping measure which is unnecessary;

- Ninth plea: by considering that the investigation into US origin bioethanol was initiated based on an adequate complaint and by adopting as a result of it the Contested Regulation, the Commission breached the principles of sound administration, non-discrimination as well as Articles 5(2) and 5(3) of the Basic Regulation;
  - Tenth plea: The Commission committed multiple violations of the rights of defence of the Applicants and their members and failed to state reasons in the adoption of the Contested Regulation.
3. In accordance with Article 46(1) of the Rules of Procedure of the General Court, the Council has to lodge its statement of defence within two months of receipt of the notification of the application. 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 Mr. Brian Byrne (Covington & Burling in Brussels).
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