



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 April 2014  
(OR. en)**

**8490/14**

<b>JUR</b>	<b>212</b>
<b>COMER</b>	<b>118</b>

#### **INFORMATION NOTE**

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from:	Council Legal Service
to:	COREPER (2nd part)
Subject:	Cases before the EU General Court - Case T-141/14 SolarWorld AG and others v. Council

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1. By application notified to the Council on 18 March 2014, the Applicants (three EU producers of solar panels) have brought an action pursuant to Article 263 TFEU for the annulment of Council Implementing Regulation 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China.<sup>1</sup>
2. In support of their application, the Applicants contend that Article 3 of the contested regulation reflects a manifest error of assessment and violates Articles 8 of the Basic Anti-Dumping Regulation, to the extent it exempts from the measures Chinese producers from which the Commission accepted a joint undertaking. The Applicants claim this violates their right to a fair legal process, the principle of good administration and their rights of defence

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<sup>1</sup> OJ L 325 of 5.12.2013, p. 1.

3. In addition, the Applicants claim that Article 3 of the contested regulation reflects a manifest error of assessment and violates Articles 8 of the Basic Anti-Dumping Regulation, to the extent that it exempts from the measures Chinese producers from which the Commission accepted an unlawful joint undertaking. The Applicants argue in this respect that the joint undertaking arrangement is unlawful because the institutions committed a manifest error of assessment by setting the initial minimum import prices (MIPs) at a level that fails to eliminate injury. They also claim that the institutions committed a manifest error of assessment since they failed to justify the use of post-investigation period (IP) data and did not set the initial MIPs at levels eliminating injury, based on post-IP data. They further claim that the institutions committed a manifest error of assessment by finding that the combination of the post-IP MIPs with the annual import levels eliminates the injurious effects of dumping and subsidisation.
4. Lastly, the Applicants claim that Article 3 of the Contested Regulation violates Article 101(1) TFEU to the extent that it grants certain Chinese producers an exemption from the measures in question on the basis of an undertaking offer, accepted and confirmed by the Undertaking Decisions, which constitutes a horizontal price fixing arrangement.
5. The Director-General of the Council Legal Service has appointed Mr Bart DRIESSEN, member of the Legal Service, as the Council's agent in the case.

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