



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from : Council Legal Service

to : COREPER (2nd part)

Subject : **Case before the General Court of the European Union**
- Case T-139/14 (PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati
Indonesia v. Council)

1. By an application notified to the Council on 18 March 2014, 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 Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 (OJ L 315, 26.11.2013. p. 2) imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, in so far as it relates to the Applicant.
2. The Applicant submits eleven pleas in law in support of its application for the annulment of Implementing Regulation (EU) No 1194/2013 insofar as it imposes an antidumping duty on the Applicant:

- violation of Article 2(5) of the Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51), the "Basic Regulation", because costs were not calculated on the basis of the records kept by the producer-exporters for the product under investigations and or producers under investigation;
- violation of Articles 1.2, 2.3 and 2.5 of the Basic Regulation because the constructed normal value includes costs not associated with the production and sale of the product under consideration;
- violation of Articles 2.3 and 2.5 of the Basic Regulation by incorporation of costs that are unrelated to the costs in the country of origin and the determination of an artificially inflated constructed normal value;
- violation of Articles 2(3) and 2(5) of the Basic Regulation that do not allow the rejection of costs because they are claimed to be low;
- inapplicability of Article 2(5) of the Basic Regulation as being contrary to Article 2.2.2(i) of the Anti-Dumping Agreement;
- error of assessment in law and in fact as the actual price paid by the biodiesel producers for CPO is not regulated by government intervention such that the actual price paid can be rejected;
- violation Article 2(10) of the Basic Regulation because, in the absence of due allowance for differences affecting price comparability, no fair comparison was made between normal value and export price;

- manifest error of assessment in the application of the cost adjustment by using the wrong feedstock;
- a manifest error of assessment in the Contested Regulation by adjusting the cost of CPO sourced from affiliated CPO producers;
- manifest error of assessment in establishing a domestic profit margin of the Applicants and is in breach of Article 2.2.2(i) of the Anti-Dumping Agreement;
- profit margin used for related trading companies located inside the Union is based on a manifest error of assessment.

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 Mr. Rainer BIERWAGEN and Mr. Christian HIPP (BEITEN BURKHARDT in Brussels)
