

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice concerning the judgments of the General Court of 15 September 2016 in Cases T-80/14, T-111/14 to T-121/14 and T-139/14 regarding Council Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on Argentinian and Indonesian imports of biodiesel, and following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organisation in disputes DS473 and DS480 (EU — Anti-Dumping Measures on Biodiesel disputes)

(2018/C 181/05)

Judgments

On 15 September 2016, the General Court of the European Union ('the General Court') delivered judgments in cases T-80/14, T-111/14 to T-121/14 ⁽¹⁾ and T-139/14 ⁽²⁾ ('the judgments') annulling Articles 1 and 2 of Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia ('the original Regulation') ⁽³⁾, to the extent that they apply to the applicants in those cases ('the exporting producers concerned') ⁽⁴⁾. The Council of the European Union had initially appealed the judgments. However, the appeals were removed from the European Court of Justice's Register on 2 and 5 March 2018 ⁽⁵⁾ following the Council's decision to withdraw the cases. Consequently, the judgments have become definitive and binding as from the date of their delivery.

The General Court held that the institutions failed to establish to the requisite legal standard that there was appreciable distortion of the prices of the main raw materials used for the production of biodiesel in Argentina and Indonesia as a result of a Differential Export Tax system that applied different tax rates on raw materials and on biodiesel. It ruled that the institutions should not have taken the view that the price of the raw materials was not reasonably reflected in the records of the Argentinian and Indonesian exporting producers examined and should not have disregarded those records when constructing a normal value for biodiesel produced in Argentina and Indonesia.

Subsequent to the General Court judgments, the WTO Dispute Settlement Body (DSB), on 26 October 2016, adopted the panel report, as modified by the Appellate Body report ('the Argentina Reports') ⁽⁶⁾, in the European Union — Anti-Dumping Measures on Biodiesel from Argentina dispute (DS473). On 28 February 2018, the DSB also adopted the panel report in the European Union — Anti-Dumping Measures on Biodiesel from Indonesia dispute (DS480) ('the Indonesia Report') ⁽⁷⁾.

⁽¹⁾ OJ C 402, 31.10.2016, p. 28.

⁽²⁾ OJ C 392, 24.10.2016, p. 26.

⁽³⁾ OJ L 315, 26.11.2013, p. 2.

⁽⁴⁾ Argentinian exporting producers Unitec Bio SA, Molinos Rio de la Plata SA, Oleaginosa Moreno Hermanos SACIFI y A, Vicentin SAIC, Aceitera General Deheza SA, Bunge Argentina SA, Cargill SACI, Louis Dreyfus Commodities S.A. (LDC Argentina SA), and Indonesian exporting producers PT Pelita Agung Agrindustri, PT Ciliandra Perkasa, PT Wilmar Bioenergi Indonesia, PT Wilmar Nabati Indonesia, PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas).

⁽⁵⁾ Orders of the President of the Court of 15 February 2018 in Joined Cases C-602/16 P and C-607/16 P to C-609/16 P, and of 16 February 2018 in cases C-603/16 P to C-606/16 P.

⁽⁶⁾ WTO, Report of the Appellate Body, AB-2016-4, WT/DS473/AB/R, 6 October 2016, and WTO, Report of the Panel, WT/DS473/R, 29 March 2016.

⁽⁷⁾ WTO, Report of the Panel, WT/DS480/R, 25 January 2018.

The Argentina and Indonesia Reports found, among other things, that the cost adjustment done by the Union in the original Regulation was incompatible with WTO law. Moreover, the Indonesia Report found that, contrary to WTO law, the Union had failed to establish a profit-cap when calculating the dumping margins. In addition, the Indonesia Report also found that there had been some company-specific calculation inconsistencies as well as additional points on injury-related matters.

Following the Argentina Reports, the Commission initiated a review⁽⁸⁾ under Article 1(3) of Regulation (EU) 2015/476 of the European Parliament and of the Council⁽⁹⁾ ('the review'). Following the review, the Commission adopted Implementing Regulation (EU) 2017/1578 amending the original Regulation ('the amending Regulation')⁽¹⁰⁾.

At the initiation of the review, the Commission announced that it considered it appropriate to examine the consequences of the findings of the Argentina Reports also for the measures imposed on biodiesel from Indonesia, as the legal interpretations contained in the Argentina Reports appeared to be also relevant for the investigation concerning Indonesia.

However, during the review, the Commission received a number of comments from interested parties concerning, in particular, the applicability of the interpretation of the Argentina Reports to the measures on biodiesel from Indonesia. The Commission considered that the analysis of the comments with regard to Indonesia required more time and decided not to include an examination of Indonesia in the amending Regulation, but instead to keep the review open as far as it concerned Indonesia.

Consequences

In accordance with Article 266 TFEU, the Union's institutions must take the necessary measures to comply with the General Court judgments. It is recognised that, in cases where proceedings consist of several administrative steps, the annulment of one of those steps does not annul the complete proceeding⁽¹¹⁾. The anti-dumping investigation is an example of such a multi-step proceeding.

According to the case-law of the Court, the procedure for replacing an annulled act may be resumed at the very point at which the illegality occurred. The Union's institutions, in so complying with the judgments, have the possibility to remedy the aspects of the original Regulation which led to its annulment in respect of the exporting producers concerned⁽¹²⁾.

The Commission should observe not only the operative part of the judgments but also the grounds which led to those judgments and constituted its essential basis, inasmuch as they were necessary to determine the exact meaning of what was stated in the operative part⁽¹³⁾. Other findings reached in the original Regulation which were not contested within the time-limits for a challenge or which were contested but rejected by the General Court's judgments, and therefore did not lead to the annulment of the contested Regulation, remain valid.

In order to comply with its obligations, the Commission resumes the anti-dumping investigation concerning imports of biodiesel originating in Argentina and Indonesia at the very point at which the illegality occurred. In this case, the failure to take into account the price of the raw materials as reflected in the records of the Argentinian and Indonesian exporting producers should be re-examined in light of the judgments.

Furthermore, the Commission is under the obligation to bring the anti-dumping measures imposed on imports of biodiesel from Argentina and Indonesia into conformity with the recommendations and rulings contained in the WTO DSB Reports.

In addition, the annulment by the General Court of the original Regulation with regard to the exporting producers concerned affects also the validity of the amending Regulation. As the amending Regulation modified a regulation which in the meanwhile had been annulled, it has itself also become void and not applicable in respect of the exporting producers concerned.

The Commission may decide not to limit this re-opening of the anti-dumping proceedings to the exporting producers concerned and to extend the findings to all exporting producers from Argentina and Indonesia. Furthermore, the re-opening of the proceedings should take into account not only the reasoning of the judgments but also the findings of the Argentina and Indonesia Reports.

⁽⁸⁾ Notice of initiation regarding the anti-dumping measures in force on imports of biodiesel originating in Argentina and Indonesia, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organization in the EU — Anti-Dumping Measures on Biodiesel dispute (DS473) (OJ C 476, 20.12.2016, p. 3).

⁽⁹⁾ Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (OJ L 83, 27.3.2015, p. 6).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2017/1578 of 18 September 2017 amending Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ L 239, 19.9.2017, p. 9).

⁽¹¹⁾ Case T-2/95 *Industrie des poudres sphériques (IPS) v Council* [1998] ECR II-3939.

⁽¹²⁾ Case C-458/98 P *Industrie des poudres sphériques (IPS) v Council* [2000] ECR I-08147.

⁽¹³⁾ Case T-89/00, *Europe Chemi-Con (Deutschland) GmbH v Council* [2002] ECR II-3651, p. 39.

Reopening procedure

Therefore, the Commission reopens the anti-dumping investigation concerning imports of biodiesel originating in Argentina and Indonesia that led to the adoption of the original Regulation and closes the pending review in so far as Indonesia is concerned ⁽¹⁴⁾.

Written submissions and the possibility to be heard

All exporting producers and the Union industry are invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within three weeks of the date of publication of this Notice in the *Official Journal of the European Union*.

Interested parties may also request to be heard by the Commission investigation services. For hearings on issues pertaining to the initial stage of the investigation the request should be made in writing and should specify the reasons for the request within 15 days of the date of publication of this Notice.

Instructions for making written submissions and sending correspondence

Information submitted to the Commission for the purpose of trade defence investigations should be free from copyright. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyright, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding and (b) to provide information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

All written submissions and correspondence by interested parties for which confidential treatment is requested shall be labelled 'Limited' ⁽¹⁵⁾.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽¹⁶⁾ ('the basic Regulation'), which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

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⁽¹⁴⁾ See footnote 8.

⁽¹⁵⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

⁽¹⁶⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response will not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden of unreasonable additional cost. The interested party should immediately contact the Commission.

Hearing Officer

Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services.

The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and by third parties as may arise during the proceeding. All requests must be submitted in good time so as not to jeopardise the orderly conduct of proceedings.

The Hearing Officer may organise hearings and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, amongst other things, to the implementation of the judgment.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁷⁾.

Information to customs authorities

The definitive anti-dumping duties paid pursuant to the original Regulation on imports of biodiesel currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 12, 3824 99 92 20), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30), produced by the exporting producers concerned as set out in the following table, and the provisional duties definitively collected in accordance with Article 2 of that Regulation, should be repaid or remitted. The repayment or remission must be requested from national customs authorities in accordance with the applicable customs legislation.

⁽¹⁷⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

	TARIC additional code
Argentina	
Unitec Bio SA, Buenos Aires	B785 (*)
Molinos Agro SA, Buenos Aires	B784
Oleaginosa Moreno Hermanos SACIFI y A, Bahia Blanca	B784
Vicentin SAIC, Avellaneda	B784
Aceitera General Deheza SA, General Deheza	B782
Bunge Argentina SA, Buenos Aires	B782
Cargill SACI, Buenos Aires	B785 (*)
Louis Dreyfus Commodities S.A., Buenos Aires	B783
Indonesia	
PT Pelita Agung Agrindustri, Medan	B788
PT Ciliandra Perkasa, Jakarta	B786
PT Wilmar Bioenergi Indonesia, Medan	B789
PT Wilmar Nabati Indonesia, Medan	B789
PT Musim Mas, Medan	B787

(*) B785 is the TARIC additional code published in Implementing Regulation (EU) No 1194/2013. The TARIC additional code currently linked to these companies is C330.

Disclosure

All exporting producers and the Union industry will be subsequently informed of the findings of this investigation and will be given an opportunity to comment.