

**Appeal brought on 24 November 2016 by the Council of the European Union against the judgment of the General Court (Ninth Chamber) delivered on 15 September 2016 in Case T-80/14: PT Musim Mas v Council**

**(Case C-606/16 P)**

(2017/C 030/39)

*Language of the case: English*

### **Parties**

*Appellant:* Council of the European Union (represented by: H. Marcos Fraile, Agent, N. Tuominen, avocat)

*Other parties to the proceedings:* PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas), European Commission, European Biodiesel Board (EBB)

### **Form of order sought**

The Appellant claims that the Court should:

- set aside the judgment of the General Court of 15 September 2016, notified to the Council on 16 September 2016, in Case T-80/14, PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union;
- reject the application at first instance for the annulment of the Contested Regulation; and
- order the Applicant to pay the Council's respective costs both at first instance and on appeal.

Alternatively,

- refer the cases back to the General Court for reconsideration;
- reserve costs of the proceedings at first instance and on appeal.

### **Pleas in law and main arguments**

1. **First**, the General Court applied the wrong legal test when assessing whether the Council had evidence to decide that domestic raw materials prices contained in the records of the relevant Indonesian exporters were sufficiently distorted to justify disregarding them and having recourse to the methodology provided by Article 2(5) of the Basic Regulation <sup>(1)</sup>, second paragraph. In doing so, the General Court has imposed too high a burden of proof on the Institution.
2. **Second**, the General Court's finding that the evidence adduced by the Institutions was not sufficient to show that there was an appreciable distortion of the prices of the main raw materials in Indonesia as a result of the DET system lacks proper reasoning.
3. **Third**, the operative part of the Contested Judgment annulling the anti-dumping duties in so far as they concern the Applicant is disproportionate to the only ground for annulment admitted by the General Court and gives undue effects to the finding of illegality.
4. The Council will demonstrate that the Contested Judgment is vitiated by several errors of law affecting its validity. In addition, the Council submits that the facts underlying the Applicant's second part of the second plea are sufficiently established so that the Court of Justice can decide on this plea and dismiss the application.
5. The Council therefore respectfully requests that the Contested Judgment should be set aside and the application for annulment of the Contested Regulation by the Applicant at first instance, dismissed.

<sup>(1)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009, L 343, p. 51) ('Basic Regulation').