

**EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF
CERTAIN FATTY ALCOHOLS FROM INDONESIA**

Request for Consultations by Indonesia

The following communication, dated 27 July 2012, from the delegation of Indonesia to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement"), and Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), the Government of Indonesia requests consultations with the European Union with respect to the imposition of definitive and provisional anti-dumping measures by the European Union on the importation of fatty alcohols, and with respect to certain aspects of the investigation underlying these measures.¹

Indonesia is particularly concerned about the following aspects of the measures at issue:

- The European Union failed to treat the Indonesian exporters' related Singapore sales offices as a single economic entity with their related producer/exporters. Furthermore, the European Union made adjustments to the export price of both Indonesian exporters to reflect both the selling expenses of the Singapore sales offices as well as a "commission" paid to the related Singapore sales offices. Because it did not have a proper factual or legal basis for this double-counting, the European Union appears to have acted inconsistently with:
 - Articles 2.3 and 2.4 of the Anti-dumping Agreement, because it inappropriately adjusted the export price the Indonesian exporters and thereby failed to conduct a fair comparison between the export price and normal value;

¹ The definitive measure was imposed pursuant to *Council Implementing Regulation (EU) No 1138/2011 of 8 November 2011 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia, and Malaysia*, OJ L 293, 11.11.2011, p.1. The provisional measure was imposed pursuant to *Commission Regulation (EU) No 446/2011 of 10 May 2011 imposing a provisional anti-dumping duty on imports of certain fatty alcohols and their blends originating in India, Indonesia, and Malaysia*, OJ L 122, 11.5.2011, p. 47. The investigation was initiated pursuant to the Notice of initiation of an anti-dumping proceeding concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia, OJ C 219, 13.8.2010, p. 12.

- Article 5.8 of the Anti-Dumping Agreement, because, where the unwarranted adjustment discussed above is eliminated, the dumping margin for the Indonesian exporters falls below the *de minimis* threshold, such that no anti-dumping duties may legally be imposed on those exporters;
 - Articles 3.1 and 3.5 of the Anti-Dumping Agreement, because the EU incorrectly calculated the volume of dumped imports and thereby also failed to properly assess the existence of a causal link between dumped imports and the material injury suffered by the domestic industry;
 - Article 9.4 of the Anti-Dumping Agreement, because the European Union incorrectly calculated the "all others" rate and inappropriately applies definitive anti-dumping duties to imports from exporters or producers not included in the examination;
 - Article 9.2 of the Anti-Dumping Agreement, because the European Union fails to collect anti-dumping duties in the "appropriate amounts"; and
 - Article X:3(a) of the GATT 1994, because the European Union failed and continues to fail to administer its laws, regulations, decisions and rulings in a uniform, impartial, and reasonable manner.
- The European Union also inappropriately excluded "branched" fatty alcohols from the scope of the domestic "like" product and, by excluding the production of such "branched" fatty alcohols from the scope of the domestic industry, also incorrectly defined the domestic industry. The European Union thereby appears to have acted inconsistently with:
 - Article 2.6, Articles 3.1 and 4.1 read with Article 2.6, and Articles 3.4 and 3.5 of the Anti-Dumping Agreement, because it incorrectly defined the product under consideration as well as the domestic like product, and failed to provide a reasoned and adequate explanation for its determination.
 - Article 4.1 of the Anti-Dumping Agreement, because it incorrectly defined the scope of the domestic industry and failed to provide a reasoned and adequate explanation for its determination.
 - Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement, because it failed to conduct a proper injury and causation analysis, based on positive evidence and an objective examination of the relevant facts, and based on a correct product and domestic industry definition, and failed to provide a reasoned and adequate explanation for its injury and causation determination.
 - The European Union appears to have acted inconsistently with Articles 3.1 and 3.5, third sentence, of the Anti-Dumping Agreement by failing to provide a reasoned and adequate explanation, based on positive evidence and involving an objective examination, of why the injury suffered by the domestic industry was not attributable to other known factors, such as, in particular, the effects of sales of branched fatty alcohols on sales of linear fatty alcohols and the impact of the financial crisis.

- The European Union appears to have acted inconsistently with Articles 3.1, 3.3 and 3.4 of the Anti-Dumping Agreement by cumulating imports from Indonesia, which were subject to negative price undercutting margins, with imports from other countries, which were at prices that undercut the domestic product. The European Union also appears to have acted inconsistently with its own administrative practice in this respect, thereby giving rise to a violation of Article X:3(a) of the GATT 1994.
- The European Union appears to have acted inconsistently with Articles 6.7 and 6.9 of the Anti-Dumping Agreement by failing to provide the Indonesian exporters with the results of the EU's verification visits to the exporters.

It appears to Indonesia that the foregoing cannot be reconciled with Article VI of the GATT 1994, Articles 1 and 18 of the Anti-Dumping Agreement, and the specific provisions cited above. In addition to the legal instruments embodying the measures at issue, this request also covers any amendments, extensions, related instruments or practices, the results of any review proceedings as well as modifications of the original measures triggered by any proceedings under EU law, including proceedings before the European Court of Justice. Indonesia reserves the right to raise additional legal claims or matters during the course of consultations.

Indonesia looks forward to receiving your response to this request. I propose that the date and venue of the consultations be agreed between our two missions.
