



13 May 2013

(13-2453)

Page: 1/4

Original: English

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDONESIA

The following communication, dated 1 May 2013, from the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 July 2012, Indonesia requested consultations with the European Union pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), 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"). These consultations related to the imposition of provisional and definitive anti-dumping measures imposed by the European Union on imports of certain fatty alcohols from Indonesia, as well as to certain aspects of the investigation underlying those measures.

Consultations were held on 13 September 2012 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute. Subsequently, the European Union Commission ("EU Commission") took certain additional administrative and investigative steps pertaining to the investigation and the measures at issue.¹ Further consultations, relating to these additional administrative and investigative steps, were held on 5 December 2012. These consultations also failed to resolve the dispute. On 21 December 2012, the European Union authorities published a Regulation amending the determination at issue and terminating the anti-dumping duties applied to one of the two investigated Indonesian exporters, but continued to apply anti-dumping duties to the other exporter. Another meeting between the parties took place on 10 January 2013. No resolution of the dispute was achieved at that meeting nor in subsequent communications.

On 28 February 2013, the EU Commission initiated a "partial reopening" of the anti-dumping determination. The purpose of this "reopening" is to "examine the impact" on the original anti-dumping determination of the termination of the investigation with respect to one of the Indonesian exporters. The relevant notice does not appear explicitly to specify a deadline for this review. In the meantime, the anti-dumping measures at issue remain in place.

Therefore, in accordance with Article 4.7 of the DSU, Indonesia requests that the Dispute Settlement Body (the "DSB") establish a panel to examine this matter. Pursuant to Article 6.2 of the DSU, Indonesia proceeds *infra* to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

A. THE MEASURES AT ISSUE

The measures at issue are the definitive and provisional anti-dumping measures imposed on imports of certain fatty alcohols and their blends from Indonesia, and certain aspects of the underlying investigation and determinations related thereto, as set forth in the following instruments:

¹ Indonesia understands that these additional administrative and investigative steps were not taken pursuant to or announced in any official published document.

- Council Implementing Regulation (EU) No 1138/2011 of 8 November 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia, and Malaysia.²
- 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.³
- Notice of initiation of an anti-dumping proceeding concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia.⁴
- Council Implementing Regulation (EU) No 1241/2012 of 11 December 2012, amending Implementing Regulation (EU) No 1138/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia.⁵
- Notice concerning a partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia (2013/C 58/08).⁶

In addition to these legal instruments, this request also covers any amendments, extensions, related instruments or practices, including methodologies, the results of any review proceedings, whether initiated prior to or following this panel request or the establishment of the panel, as well as modifications of the original measures triggered by any proceedings under European Union law, including proceedings before the European Court of Justice.

In particular, this request includes any and all additional investigative and administrative steps that have been taken by the EU Commission subsequent to the publication of Council Implementing Regulation (EU) No 1138/2011 of 8 November 2011, as well as the results of such additional investigative and administrative steps, whether these steps or their results have been published or not. One such result of these additional investigative and administrative steps is Council Implementing Regulation (EU) No 1241/2012 of 11 December 2012, as referenced above.

B. LEGAL BASIS OF THE COMPLAINT

In Indonesia's view, the measures at issue are inconsistent with the European Union's obligations under the Anti-Dumping Agreement and the GATT 1994 for the following reasons:

- The European Union failed to treat one of the Indonesian exporters' related Singapore sales office as a single economic entity with its related producer/exporter. Furthermore, the European Union made adjustments to the export price of this Indonesian exporter to reflect both the selling expenses of the Singapore sales office as well as an imputed "commission" paid to the related Singapore sales office. Because it did not have a proper factual and legal basis for these adjustments, the European Union acted inconsistently with:
 - Articles 2.3 and 2.4 of the Anti-Dumping Agreement, because it inappropriately adjusted the export price for one of the Indonesian exporters and thereby failed to conduct a fair comparison between the export price and normal value. Moreover, in so doing, the European Union treated arbitrarily differently the two investigated Indonesian exporters, although the relevant circumstances of these two exporters are identical;
 - Article 5.8 of the Anti-Dumping Agreement, because, where the unwarranted adjustment discussed above is eliminated, the dumping margin for the Indonesian

² Official Journal L 293, 11.11.2011, p. 1.

³ Official Journal L 122, 11.5.2011, p. 47.

⁴ Official Journal C 219, 13.8.2010, p. 12.

⁵ Official Journal L 352, 21.12.2012, p. 1.

⁶ Official Journal C 58, 28.02.2013, p. 24.

exporter at issue falls below the *de minimis* threshold, such that no anti-dumping measures may legally be imposed on this exporter;

- Articles 3.1, 3.4, and 3.5 of the Anti-Dumping Agreement, because the European Union incorrectly calculated the volume of dumped imports and failed to examine properly the magnitude of the margin of dumping as an injury factor, thereby also failing 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 applicable to exports from Indonesia and inappropriately applies definitive anti-dumping measures 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 measures in the "appropriate amounts";
 - 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. In particular, the European Union fails to treat equally and even-handedly the two investigated Indonesian exporters with respect to the "commission" adjustment, although the relevant circumstances of these two Indonesian exporters are identical. The European Union also fails to apply its laws, regulations, decisions and rulings consistently with its previous practice to the Indonesian exporter that continues to be subject to anti-dumping duties.
- The European Union also inappropriately excluded so-called "branched" fatty alcohols from the scope of both the product under consideration and the domestic "like" product. By excluding the production of these "branched" fatty alcohols from the scope of the domestic industry, the European Union also incorrectly defined the domestic industry. The European Union thereby 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 improperly established the facts, 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 improperly established the facts, incorrectly defined the scope of the domestic industry and failed to provide a reasoned and adequate explanation for its determination; and,
 - 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 a proper determination of the domestic like product and the domestic industry, and failed to provide a reasoned and adequate explanation for its determination.
 - The European Union acted inconsistently with Articles 3.1 and 3.5 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, including (but not limited to), the effects of sales of branched fatty alcohols on sales of linear fatty alcohols and the impact of the financial crisis.
 - The European Union acted inconsistently with Articles 3.1, 3.3, and 3.4 of the Anti-Dumping Agreement by cumulating imports from Indonesia, which had negative price undercutting margins, with imports from other countries, which were at prices that undercut the domestic product. In this respect, the European Union also failed to administer its laws, regulations, decisions, and rulings in a uniform, impartial and reasonable manner, contrary to Article X:3(a) of the GATT 1994.

- The European Union 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 Commission's verification visits to the exporters and by failing to inform all interested parties of the essential facts under consideration.

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, as well as the specific provisions cited above.

Indonesia considers that the measures described above nullify and impair benefits accruing to Indonesia under the Anti-Dumping Agreement and the GATT 1994.

C. REQUEST FOR THE ESTABLISHMENT OF A PANEL

In the light of the above, Indonesia requests, pursuant to Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement and Article XXIII:2 of the GATT 1994, that the DSB establish a panel to examine this matter. Indonesia further requests that the panel have the standard terms of reference, as set forth in Article 7.1 of the DSU.

Indonesia asks that this request be placed on the agenda of the DSB meeting to be held on 24 May 2013.
