

COMMISSION IMPLEMENTING REGULATION (EU) 2023/2072**of 27 September 2023****repealing the anti-dumping duties on imports of biodiesel originating in Argentina and Indonesia imposed by Council Implementing Regulation (EU) No 1194/2013**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 14(1) thereof,

Whereas:

- (1) The Council imposed by Implementing Regulation (EU) No 1194/2013 a definitive anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia ('the original Regulation') ⁽²⁾. This Regulation entered into force on 27 November 2013.
- (2) On 15 September 2016, the General Court of the European Union ('the General Court') delivered the judgments in cases T-80/14 ⁽³⁾, T-111/14 to T-121/14 ⁽⁴⁾ and T-139/14 ⁽⁵⁾ ('the judgments') annulling Articles 1 and 2 of the original Regulation to the extent that they applied to the applicants in those cases ('the exporting producers concerned') ⁽⁶⁾. The Council of the European Union had initially appealed the judgments but following the Council's decision in 2018 to withdraw its appeals, the judgments became definitive and binding as from the date of their delivery.
- (3) On 26 October 2016 the WTO Dispute Settlement Body ('DSB') adopted the panel report, as modified by the Appellate Body report ('the Argentina Reports'), in the case European Union – Anti-Dumping Measures on Biodiesel from Argentina dispute (DS473) ⁽⁷⁾. Among other things, the reports found that the cost adjustment performed by the EU when it imposed anti-dumping duties on biodiesel originating in Argentina was incompatible with WTO law.
- (4) On 18 September 2017, the Commission adopted Implementing Regulation (EU) 2017/1578 implementing the DSB findings in DS473 and amending the original Regulation as far as imports from Argentina were concerned ('the amending Regulation') ⁽⁸⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ 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 (OJ L 315, 26.11.2013, p. 2).

⁽³⁾ Case T-80/14, PT Musim Mas v Council.

⁽⁴⁾ Case T-111/14 Unitec Bio SA v Council of the European Union, Cases T-112/14 to T-116/14 and T-119/14, Molinos Río de la Plata SA and Others v Council of the European Union, Case T-117/14, Cargill SACI v Council of the European Union, Case T-118/14, LDC Argentina SA v Council of the European Union, Case T-120/14, PT Ciliandra Perkasa v Council of the European Union, Case T-121/14, PT Pelita Agung Agrindustri v Council of the European Union.

⁽⁵⁾ Case T-139/14, PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council of the European Union.

⁽⁶⁾ Argentinian exporting producers Unitec Bio SA, Molinos Río 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).

⁽⁷⁾ 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.

⁽⁸⁾ 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).

- (5) On 28 February 2018, the DSB also adopted the panel report in the case European Union – Anti-Dumping Measures on Biodiesel from Indonesia dispute (DS480) ('the Indonesia Report') ⁽⁹⁾. Neither Indonesia nor the EU appealed that report which main finding was similar to the one in DS473, notably that the cost adjustment performed by the EU as regards Indonesian imports was incompatible with WTO law.
- (6) By Implementing Regulation (EU) 2018/1570 ⁽¹⁰⁾ the Commission terminated the proceedings concerning imports of biodiesel originating in Argentina and Indonesia and repealed Implementing Regulation (EU) No 1194/2013.
- (7) By Implementing Regulation (EU) 2018/1570 the Commission instructed customs authorities that the definitive anti-dumping duties paid pursuant to Implementing Regulation (EU) No 1194/2013 on imports of biodiesel from Argentina and Indonesia and the provisional duties definitively collected in accordance with Article 2 of that Regulation shall be repaid or remitted insofar as they related to imports of biodiesel sold for export to the Union by the exporting producers in Argentina and Indonesia that had successfully challenged the original regulation before the Court ⁽¹¹⁾. On the other hand, the Commission found that the anti-dumping duties that had been levied on other companies had been legally collected under Union law and should not be repaid or remitted. The repayment or remission had to be requested from national customs authorities in accordance with the applicable customs legislation.
- (8) On 22 June 2023, the Court of Justice ruled in case C-268/22, *Vitol v. Belgische Staat* ⁽¹²⁾, concerning a request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union ('TFEU') from the *Nederlandstalige rechtbank eerste aanleg Brussel*, that Implementing Regulation (EU) No 1194/2013, as amended by Implementing Regulation (EU) 2017/1578, is invalid. In particular, the Court of Justice noted that all the appropriate conclusions must be drawn from the findings made by both the General Court and the Commission itself further to the re-opening, in May 2018, of the anti-dumping investigation regarding the imports of biodiesel originating in Argentina and Indonesia ⁽¹³⁾.
- (9) According to Article 266 of the TFEU, the Union institutions are required to take the necessary steps to comply with the Court's judgments.
- (10) The Commission recalled that Implementing Regulation (EU) No 1194/2013, as amended, was repealed as from 20 October 2018 by Implementing Regulation (EU) 2018/1570. However, the judgment in case C-268/22 has the effect of invalidating the original Regulation, as amended in 2017, *erga omnes* and *ex-tunc*. In other words, the ruling is applicable to all parties and Implementing Regulation (EU) No 1194/2013, as amended, is considered invalid from the day it entered into force with respect to all parties.
- (11) The Commission considered that the errors found by the Court cannot be remedied so that the correct application of the rules could not warrant the reimposition of the measures. Accordingly, Implementing Regulation (EU) No 1194/2013, as amended by Implementing Regulation (EU) 2017/1578, shall be repealed in its entirety with effect from 27 November 2013. Furthermore, any definitive duty paid, and provisional duty collected pursuant to Implementing Regulation (EU) No 1194/2013, as amended, shall be repaid or remitted in accordance with the applicable customs legislation. It follows, in particular, that any operator which has paid those duties is able, in principle, to claim their repayment only if and in so far as the three-year period laid down for that purpose in Article 121(1)(a) of the Union Customs Code has not expired. The fact that Regulation (EU) No 1194/2013 has been declared invalid (including with *erga omnes* effect) would not represent an unforeseeable circumstance or force majeure allowing for an extension of this period under second subparagraph of Article 121(1) of the Union Customs Code.

⁽⁹⁾ WTO, Report of the Panel, WT/DS480/R, 25 January 2018.

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2018/1570 of 18 October 2018 terminating the proceedings concerning imports of biodiesel originating in Argentina and Indonesia and repealing Implementing Regulation (EU) No 1194/2013 (OJ L 262, 19.10.2018, p. 40).

⁽¹¹⁾ See footnote 6.

⁽¹²⁾ Judgement of 22 June 2023, VITOL, C-268/22, not published, ECLI:EU:C:2023:508.

⁽¹³⁾ *Ibidem*, para. 71.

- (12) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁴⁾ when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. The anti-dumping duties on imports of biodiesel originating in Argentina and Indonesia imposed by Implementing Regulation (EU) No 1194/2013, as amended by Implementing Regulation (EU) 2017/1578, are repealed as from 27 November 2013.
2. Any anti-dumping duty paid pursuant to Implementing Regulation (EU) No 1194/2013, as amended by Implementing Regulation (EU) 2017/1578, shall be repaid or remitted in accordance with the applicable customs legislation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 September 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁴⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).