

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

Report of the Appellate Body WT/DS442/AB/R and Add.1*

*Adopted by the Dispute Settlement Body
on 29 September 2017*

Indonesia, <i>Appellant/Appellee</i> European Union, <i>Other Appellant/Appellee</i> Korea, <i>Third Participant</i> United States, <i>Third Participant</i>		Appellate Body Division: Ramírez-Hernández, Presiding Member Kim, Member Zhao, Member
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ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
BCI	Business Confidential Information
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
Ecogreen	PT Ecogreen Oleochemicals
EU Basic Anti-Dumping Regulation	Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, published in <i>Official Journal of the European Union</i> , L Series, No. 343 (22 December 2009), p. 51 ff (Panel Exhibit EU-3)
Final Determination	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, <i>Official Journal of the European Union</i> , L Series, No. 293 (11 November 2011), pp. 1-18 (Panel Exhibit IDN-4)
GATT 1994	General Agreement on Tariffs and Trade 1994
General Court	European Union's General Court
General Disclosure Document	European Commission, General Disclosure Document dated 26 August 2011, AD563, Proposal to impose definitive anti-dumping duties on Imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia (Panel Exhibit IDN-39)
ICOF-S	Inter-Continental Oils & Fats Pte Ltd (Singapore)
Interpipe Judgment	Court of Justice, Judgment of 16 February 2012 in joined Cases C-191/09 P and C-200/09 P, Council of the European Union (C-191/09 P) / European Commission (C-200/09 P) v. Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) (concerning Judgment of the Court of First Instance of the European Union, Case T-249/06, Interpipe Niko Tube ZAT and Interpipe NTRP VAT v. Council of the European Union [2009] ECR II -383) (Panel Exhibit IDN-49)

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Abbreviation	Description
Notice of initiation of the investigation	European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia, <i>Official Journal of the European Union</i> , C Series, No. 219 (13 August 2010), pp. 12-16 (Panel Exhibit IDN-12)
P&L	profit and loss statement
Panel Report	Panel Report, <i>European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia</i> , WT/DS442/R
Panel's BCI Procedures	Additional Working Procedures Concerning Business Confidential Information of 13 July 2015, contained in Annex A-2 of the Panel Report
Preliminary Determination	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, <i>Official Journal of the European Union</i> , L Series, No. 122 (11 May 2011), pp. 47-62 (Panel Exhibit IDN-3)
PT Musim Mas	Indonesian producer PT Perindustrian dan Perdagangan Musim Semi Mas
PT Musim Mas Judgment	Judgment of the General Court (seventh Chamber), 25 June 2015, in Case T-26/12, PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v. Council of the European Union (Case C-468/15P) ECLI:EU:T:2015:437 (Panel Exhibit EU-4)
Revised Determination	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, <i>Official Journal of the European Union</i> , L Series, No. 352 (21 December 2012), pp. 1-5 (Panel Exhibit IDN-5)
SG&A	selling, general and administrative costs
Working Procedures	Working Procedures for Appellate Review, WT/AB/WP/6, 16 August 2010
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

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PANEL EXHIBITS CITED IN THIS REPORT

Exhibit Number	Description
IDN-2	Email correspondence of 10 and 11 July 2013
IDN-3	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, <i>Official Journal of the European Union</i> , L Series, No. 122 (11 May 2011), pp. 47-62
IDN-4	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, <i>Official Journal of the European Union</i> , L Series, No. 293 (11 November 2011), pp. 1-18
IDN-5	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, <i>Official Journal of the European Union</i> , L Series, No. 352 (21 December 2012), pp. 1-5
IDN-8	Email correspondence of 12, 19, and 22 September 2014 between the WTO Secretariat and the parties
IDN-12	European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia, <i>Official Journal of the European Union</i> , C Series, No. 219 (13 August 2010), pp. 12-16
IDN-17	Excerpt from the company-specific definitive disclosure to PT Musim Mas, dated 26 August 2011 (BCI)
IDN-18	PT Musim Mas response to Commission questionnaire AD563 (2010), Annex A-3.4: Corporate structure of the Musim Mas group (BCI)
IDN-19	PT Musim Mas response to Commission questionnaire AD563 (2010), Annex A: List of PT Musim Mas' shareholders (BCI)
IDN-22	PT Musim Mas response to Commission questionnaire AD563 (2010) (excerpt – response to question H-2.4) (BCI)
IDN-24	Sale and Purchase Agreement between PT Musim Mas and Inter-Continental Oils & Fats Pte Ltd (1 January 2009) (BCI)
IDN-25	Sale and Purchase Agreement between PT Musim Mas and Inter-Continental Oils & Fats Pte Ltd (1 January 2010) (BCI)
IDN-26	PT Musim Mas, "Impact of the Interpipe judgment on the fatty alcohol anti-dumping investigation (AD563): PTMM situation", PowerPoint presentation at the DG Trade hearing on 16 August 2012 (BCI)

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IDN-27	CMS Hasche Sigle, Company-internal memorandum dated 22 November 2010 concerning "Inspection Visit Medan 22-25.11.2010" (BCI)
IDN-33	Provisional Company-Specific Disclosure to PT Musim Mas, Annex 2: Calculation of dumping margin (BCI)
IDN-34	PT Musim Mas' Comments on the Preliminary Determination, 10 June 2011 (BCI)
IDN-38	CMS Hasche Sigle, Company-internal memorandum dated 18-19 November 2010 concerning "Minutes Inspection Visit Singapore 18.11.2010" (verification of ICOF-S) (BCI)
IDN-39	European Commission, General Disclosure Document dated 26 August 2011, AD563, Proposal to impose definitive anti-dumping duties on Imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia
IDN-47	Verification Exhibit PTMM-18 (BCI)
IDN-49	Court of Justice, Judgment of 16 February 2012 in joined Cases C-191/09 P and C-200/09 P, Council of the European Union (C-191/09 P) / European Commission (C-200/09 P) v. Interpipe Nikopol'sky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) (concerning Judgment of the Court of First Instance of the European Union, Case T-249/06, Interpipe Niko Tube ZAT and Interpipe NTRP VAT v. Council of the European Union [2009] ECR II-383)
IDN-51	Excerpt from Jacob Viner, <i>Dumping: A Problem in International Trade</i> (1923) (reprinted, Augustus M. Kelley, 1966)
IDN-52	LCN Legal Limited, "How to Put in Place Effective Intercompany Agreements for Transfer Pricing", http://lclegal.com/how-to-put-in-place-effective-intercompany-agreements-for-transfer-pricing/ , accessed 21 December 2015
IDN-53	LCN Legal Limited, Intercompany Agreement Template for Term Loan Agreement (2013), available at http://lclegal.com/template-intercompany-agreement-for-transfer-pricing-term-loan-agreement/
IDN-54	LCN Legal Limited, Intercompany Agreement Template for Limited Risk Distribution Agreement (2014), available at http://lclegal.com/template-intercompany-agreement-for-transfer-pricing-limited-risk-distribution-agreement/
EU-1	Letter dated 5 November 2010 from the European Commission to CMS Hasche Sigle concerning AD563 and PT Musim Mas
EU-2	Letter regarding disclosure of provisional findings dated 11 May 2011 (BCI)
EU-3	Council Regulation (EC) No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, published in <i>Official Journal of the European Union</i> , L Series, No. 343 (22 December 2009), p. 51 ff

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Exhibit Number	Description
EU-4	Judgment of the General Court (seventh Chamber), 25 June 2015, in Case T-26/12, PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v. Council of the European Union (Case C-468/15P) ECLI:EU:T:2015:437
EU-5	PT Musim Mas response to Commission questionnaire AD563 (2010), Attachment A-3.3.1: Table G – PT Musim Mas Business Organization Structure (BCI)
EU-6	PT Musim Mas response to Commission questionnaire AD563 (2010), Attachment A-3.3.2, Table G – Organization Chart – Fatty Alcohols Division (BCI)
EU-10	Letter dated 26 August 2011 from European Commission to CMS Hasche Sigle concerning AD563 Definitive Disclosure and PT Musim Mas (PTMM) (disclosure of definitive findings dated 26 August 2011) (BCI)
EU-12	Excel file "PTMM definitive disclosure.xls" (BCI)
EU-14	List of exhibits provided by the Commission to PT Musim Mas at the conclusion of three verification visits (BCI)