

Commission Implementing Regulation (EU) 2019/1344 of 12 August 2019 imposing a provisional countervailing duty on imports of biodiesel originating in Indonesia

- Article 1 (1) A provisional countervailing duty is imposed on imports of...
- Article 2 (1) Interested parties shall submit their written comments on this...
- Article 3 This Regulation shall enter into force on the day following...
- Signature

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*Changes to legislation:* There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1344. (See end of Document for details)

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- (1) OJ L 176, 30.6.2016, p. 55.
- (2) OJ C 439, 6.12.2018, p. 16.
- (3) In this Regulation, mineral diesel refers to a fossil-based, conventional diesel.
- (4) The verification of the unrelated importer, based in Switzerland, was conducted with regard to imports into the EU.
- (5) MOPS (short for the Mean of Platts Singapore) is the average of a set of Singapore-based oil product price assessments published by S&P Global Platts.
- (6) Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB, 11 March 2011, para. 317. See also Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/RW, adopted 16 July 2019, para. 5.96.
- (7) Pursuant to Article 13 of Regulation of the Minister of Energy and Mineral Resources 26/2006, the biodiesel producer shall enclose to the invoice the following documentation: (i) copy of Decision of the Directorate General of New Renewable Energy and Energy Conservation ('EBTKE') on behalf of the Minister that the company is allowed to participate in the procurement of biodiesel and the respective volume allocation of biodiesel based on the capacity of the respective producers; (ii) copy of contract for procurement of biodiesel between Pertamina and the relevant biodiesel producer; (iii) certificate signed by Pertamina and the relevant biodiesel producer, stamped by the GOI and including information about the place of delivery, the volume and type of biodiesel provided/distributed, and the amount of transport fees; and (iv) copy of the agreement between the Fund Management Agency and the relevant biodiesel producer.
- (8) Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869, paras. 284 and 309.
- (9) Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada – Recourse by Canada to Article 21.5 of the DSU*, WT/DS257/AB/RW, adopted 20 December 2005, DSR 2005:XXIII, p. 11357, para. 52.
- (10) See Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R / WT/DS426/AB/R, adopted 24 May 2013, DSR 2013:I, p. 7, paras. 5.119 and 5.120.
- (11) Panel Report, *United States – Subsidies on Upland Cotton*, WT/DS267/R, Add.1 to Add.3 and Corr.1, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, p. 299, para. 7.1116.
- (12) WT/DS316/R of 30 June 2010, *EC and certain Member States – Measure Affecting Trade In Large Civil Aircrafts*, para 7.494.
- (13) WT/DS316/R of 30 June 2010, *EC and certain Member States – Measure Affecting Trade In Large Civil Aircrafts*, para 7.495.
- (14) According to recent data from the Indonesian central bank, no single economic activity accrues for more than 20 % of the Indonesian GDP. Sources at <https://www.bi.go.id/en/iru/economic-data/real-sector/Contents/Default.aspx>, accessed on 17.7.2019.
- (15) For a similar analysis, see Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 73, 18.3.2016, p. 1).
- (16) Panel Report, *US – Export Restraints (WT/DS194/R)*, circulated on 29 June 2001, para. 8.29.
- (17) WT/DS296/AB/R of 27 June 2005, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, para 110 and 111. WT/DS299/R of 17 June 2005, *European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea*, para 7.25 adopted a similar approach.
- (18) WT/DS296/AB/R of 27 June 2005, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, para 7.38.
- (19) Panel Report, *US – Export Restraints (WT/DS194/R)*, circulated on 29 June 2001, paras. 8.33-8.34.
- (20) Panel Report, *US – Export Restraints*, paras. 8.29-8.31.

- (21) Appellate Body Report, *US – DRAMS (WT/DS296/AB/R)*, circulated 27 June 2005, para. 116.
- (22) Appellate Body Report, *US – DRAMS*, para. 115.
- (23) Appellate Body Report, *US – DRAMS*, para. 112.
- (24) See Panel Report, *Korea – Commercial Vessels (WT/DS273/R)*, circulated on 7 May 2005, para. 7.373.
- (25) Appellate Body Report, *US – DRAMS (WT/DS296/A/R)*, para. 114.
- (26) Appellate Body Report, *US – DRAMS (WT/DS296/A/R)*, para. 124.
- (27) US Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing duty Investigation of Biodiesel from the Republic of Indonesia; August 21, 2017, C-560-831 Investigation, p. 15, footnote 95.
- (28) See for a similar conclusion, *idem*, p. 15.
- (29) Customs and Excise News Magazine, Volume 47, No. 9, September 2015.
- (30) Export taxes and other restrictions on raw material and their limitation through free trade agreements: Impact on developing countries, 2016.
- (31) Similarly, see judgement of the General Court of 10 April 2019, T-300/16, Jindal Saw, ECLI:EU:T:2019:235, para. 117.
- (32) WT/DS379/AB/R (US – Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US – Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 – 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92; and Appellate Body Report, United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/AB/RW, adopted 16 July 2019, para. 5.96.
- (33) <https://www.asianagri.com/en/medias/media/press-release/indonesian-oil-palm-estate-fund-agency-bpdpks-handed-the-idr-6-75-billion-of-replanting-fund-to-asian-agri-s-smallholders>
- (34) <https://www.reuters.com/article/us-indonesia-palmoil/palm-oil-watchdog-to-create-separate-standards-for-smallholders-indonesia-director-idUSKCN1SU1DL>
- (35) <https://www.theborneopost.com/2018/11/18/indonesia-boosts-domestic-palm-oil-consumption-as-currency-pressures-mount/>
- (36) See Panel Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (Drams) from Korea*, WT/DS296, 21 February 2005, footnote 57 (‘[W]e consider that the reference to functions “normally vested in the government” should also be understood to mean functions of taxation and revenue expenditure. (...) To the extent that loans and restructuring measures involve taxation or revenue expenditure, they are capable of falling within the scope of that provision’).
- (37) Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, p. 571, para. 52.
- (38) Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, p. 3779, para. 73, footnote 65.
- (39) See Opinion of AG Van Gerven of 7 March 1989, *Fediol v Commission*, C-70/87, ECLI:EU:C:1989:110, footnote 33.
- (40) Oxford English Dictionary online, entries I.5.b and I.10.
- (41) GATT Panel on Subsidies and State Trading, Report on Subsidies, L/1160, 23 March 1960 (The panel agreed that ‘a system under which a government, by direct or indirect methods, maintains such a price by purchases and resale at a loss is a subsidy’).
- (42) Oxford English Dictionary online, entry I.3.b.

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/1344. (See end of Document for details)

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- (43) SCM Agreement, Article 15.4 ('...whether there has been an increased burden on government support programmes'); see also Agreement on Agriculture, Article 6 and Annexes II and III ('domestic support').
- (44) Panel Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/R and Add.1, adopted 16 November 2012, upheld by Appellate Body Report WT/DS414/AB/R, DSR 2012:XII, p. 6369, para. 7.86.
- (45) 'Potential' effects refer to those effects which naturally follow from the overall architecture, design and structure of the measure, without the need of 'observed' or actual effects on the market.
- (46) <https://www.reuters.com/article/us-indonesia-biodiesel/indonesia-to-make-biodiesel-use-compulsory-from-september-1-official-idUSKBN1KM4WK>, accessed on 17.7.2019.
- (47) <https://www.reuters.com/article/us-indonesia-biodiesel/indonesia-bets-big-on-biodiesel-to-limit-costs-of-oil-imports-idUSKBN1KS0CC>, accessed on 17.7.2019.
- (48) <https://www.biofuelsdigest.com/bdigest/2019/01/08/indonesia-wants-to-push-for-power-production-from-palm-oil-biodiesel/>, accessed on 17.7.2019.
- (49) <https://www.ofimagazine.com/news/indonesian-biodiesel-production-could-grow-by-40>, accessed on 17.7.2019.
- (50) <https://jakartaglobe.id/context/indonesia-oil-palm-estate-fund-adequate-to-support-b20-biodiesel-policy/>, accessed on 17.7.2019.
- (51) Blending mandate enacted pursuant to Ministry of Energy and Mineral Resources regulation 12/2015.
- (52) See WT/DS436/AB/R United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India, 8 December 2014, para. 4.244.
- (53) Appellate Body Reports, *Brazil – Certain Measures Concerning Taxation and Charges*, WT/DS472/AB/R and Add.1/WT/DS497/AB/R and Add.1, adopted 11 January 2019, paras. 5.212 – 5.221.
- (54) Panel Reports, *Brazil – Certain Measures Concerning Taxation and Charges*, WT/DS472/R, Add.1 and Corr.1/WT/DS497/R, Add.1 and Corr.1, adopted 11 January 2019, as modified by Appellate Body Reports WT/DS472/AB/R / WT/DS497/AB/R, paras. 7.491 – 7.494.
- (55) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009, p. 16).
- (56) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).
- (57) Database of specific products under 'surveillance' or monitoring imported into the Union customs territory maintained by the Directorate-General for Taxation and Customs Union.
- (58) 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).
- (59) On 15 September 2016, the General Court of the European Union ('the General Court') delivered judgments in cases T-80/14, T-111/14 to T-121/14 (5) and T-139/14 (6) ('the judgments') annulling Articles 1 and 2 of the definitive Regulation to the extent that they apply to the applicants in those cases ('the exporting producers concerned'). The Council of the European Union had initially appealed the judgments. However, following the Council's decision to withdraw its appeals, the cases were removed from the European Court of Justice's Register on 2 and 5 March 2018 (Orders of the President of the Court of 15 February 2018 in Joined Cases C-602/16 P and C-607/16 P to C-609/16 P, and of 16 February 2018 in cases C-603/16 P to C-606/16 P). Consequently, the judgments became definitive and binding as from the date of their delivery.
- (60) WT/DS480/R European Union - Anti-Dumping Measures on Biodiesel from Indonesia, para 7.152
- (61) WT/DS480/R European Union - Anti-Dumping Measures on Biodiesel from Indonesia, paras 7.143-7.161.
- (62) WT/DS480/R European Union - Anti-Dumping Measures on Biodiesel from Indonesia, para 7.160.

- (63) In WT/DS480/R, para 7.160 Indonesia argued that a comparison between Indonesian imports and blended CFFP 0 biodiesel sold by the Union industry representing 37 % of all Union sales was insufficient. Indonesia further argued that the Commission should have compared the sales prices of the remaining 63 % of the Union sales. This comparison, like the price difference referred to in recital (284), confirms that there is significant undercutting during the IP.
- (64) Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 1).
- (65) Commission Implementing Decision (EU) 2019/245 of 11 February 2019 accepting undertaking offers following the imposition of definitive countervailing duties on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 71).
- (66) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

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