



CENTRE FOR TRADE AND INVESTMENT LAW

Case discussion on

EU Biofuel Disputes

DS600: European Union and certain Member states — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels

DS593: European Union — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels

As sustainability goals increasingly intersect with global trade dynamics, the European Union's regulatory framework for biofuels has sparked significant legal and economic concerns. The EU's Renewable Energy Directive (RED II), with its stringent criteria on high ILUC-risk feedstocks, has drawn sharp criticism from major palm oil-producing nations like Malaysia and Indonesia, culminating in twin WTO disputes—DS600 and DS593. These cases underscore the contested balance between environmental policymaking and trade obligations, raising critical questions about discrimination, scientific justification, and compliance with the WTO disciplines.

In this session, our esteemed speakers — **Mr. Nitin Kumar Yadav, Prof. James J. Nedumpara, Dr. Anwar Sadat, Ms. Shiny Pradeep and Mr. Vishishth Malhotra** — will dissect the legal intricacies of these disputes, exploring their implications for sustainable trade governance. This discussion will be preceded by a presentation on the recent WTO disputes DS600 and DS593.

Room No. 803, 8th Floor, NAFED House, New Delhi
31 July, 2025 | 12:00 AM onwards



DS600 & DS593:

An Overview

The WTO disputes DS600 (Malaysia) and DS593 (Indonesia) concern challenges brought by major palm oil-exporting developing countries against the European Union's regulatory measures on biofuels, particularly those derived from oil palm crops. Despite being launched separately, these disputes are closely related, involve the same EU directives and regulations, and address overlapping legal and policy concerns.

Measures at Issue

Both disputes revolve around EU-wide regulatory instruments that allegedly restrict the market access of palm oil-based biofuels under the guise of climate and environmental objectives. The measures primarily arise under the EU Renewable Energy Directive (RED II) 2018/2001, which was adopted on 11 December 2018 and entered into force on 24 December 2018, and its Delegated Regulation 2019/807, which was adopted on 13 March 2019 and entered into force on 10 June 2019. These instruments introduced a tiered framework that differentiates biofuels based on their perceived indirect land-use change (ILUC) risks. Notably, RED II establishes a common framework for the promotion of renewable energy, including its use in the transport sector. Specifically, the measures challenged include:

- A cap of 7% on the contribution of food- and feed-crop-based biofuels toward renewable energy targets.
- A designation of palm oil-based biofuels as “high ILUC-risk”, subjecting them to a gradual phase-out from 2023 to 2030.
- A low ILUC-risk certification mechanism, which provides exemptions from the phase-out only to certain certified biofuels.

In addition, both complainants challenged a national measure adopted by France known as the *Taxe Incitative à l'Incorporation de Biocarburants* (TIRIB)—a tax incentive scheme that allegedly favors biofuels made from European crops like rapeseed. The TIRIB was examined under subsidy and taxation disciplines.



Key Findings and Thematic Overview of WTO Disputes DS600 & DS593

1. Regulatory Discrimination and Unfair Treatment

A central aspect of the disputes was determining whether the EU and French measures discriminated against Malaysia's/Indonesia's (hereinafter 'complainants') palm oil biofuels, either by violating National Treatment (i.e., less favourable treatment than "like" domestic products) or Most-Favoured-Nation (MFN) Treatment (i.e., less favourable treatment than "like" products from other countries).

The Panel found that the EU's "high ILUC-risk cap and phase-out" was inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TBT Agreement for violating the National Treatment obligation. Furthermore, both the EU and French measures were found to violate the Most-Favoured-Nation Treatment principle under GATT Article I:1 and Article 2.1 of the TBT Agreement. Specifically, the EU's measure was inconsistent because it placed palm oil-based biofuel at a disadvantageous position when compared to like products imported from other countries. The French measure, conversely, was deemed inconsistent with Article I:1 as it conferred an advantage upon imported biofuels like soybean oil crop-based biofuels that was not immediately and unconditionally provided to like palm oil-based biofuel imported from the complainants.

Additionally, the Panel identified discrimination concerning Internal Taxation under GATT Article III:2. The French TIRIB measure was found to be inconsistent with this Article because it imposed higher internal taxes on imported palm oil-based biofuel than on comparable domestic rapeseed and soybean oil crop-based biofuels. Finally, the Panel concluded that the EU administered its measures in a manner that was not "uniform, impartial and reasonable," thus violating Article X:3(a) of GATT and TBT Article 2.1.



2. Environmental and Health Justifications (GATT Article XX Exceptions)

Beyond the initial findings of discrimination, a critical aspect of the Panel's work involved evaluating whether these measures, despite their discriminatory nature, could be justified under the general exceptions provided in GATT Article XX, specifically for environmental protection. The Panel ultimately determined that while the EU's objectives were valid, the discriminatory application of the measures prevented them from passing the final test of Article XX. However, the measures were found to be provisionally justified by the Panel under the following paragraphs of Article XX:

- Article XX(g) (Conservation of exhaustible natural resources): The Panel accepted that both the EU and French measures qualified as "a measure relating to the conservation of exhaustible natural resources that was made effective in conjunction with restrictions on domestic consumption or production within the meaning of Article XX(g)."
- Article XX(b) (Protection of human, animal, or plant life or health): The Panel also found both measures to be provisionally justified as "a measure necessary to protect human, animal or plant life or health within the meaning of Article XX(b)."

3. Scientific Basis and Technical Justification

The Panel also examined the scientific and technical justification for the EU's measures, assessing whether they aligned with international standards and were no more trade-restrictive than necessary to achieve legitimate environmental objectives.

The Panel affirmed that the "7% maximum share" and the "high ILUC-risk cap and phase-out" constituted "technical regulations" under the TBT Agreement. Furthermore, the complainants failed to demonstrate that the EU's measures deviated from the obligation to utilize relevant international standards, such as ISO 14040:2016 and 14044:2017- "Environmental management — Life cycle assessment — Principles and framework", 14067:2018- "Greenhouse gases – Carbon footprint of products – Requirements and guidelines for quantification" and 13065:2015 "Sustainability criteria for bioenergy" as a basis for its regulations (TBT Article 2.4). The complainants also did not succeed in proving that the measures were "more trade-restrictive than necessary to fulfil a legitimate objective," indicating the Panel's acceptance of the EU's environmental protection goal as legitimate (TBT Article 2.2). Additionally, the complainants did not establish that the EU failed to adequately explain the justification for its measures (TBT Article 2.5) or acted inconsistently with the obligation to specify regulations in terms of performance rather than design when appropriate (TBT Article 2.8).



4. Special and Differential Treatment for Developing Countries

Flowing from the detailed examination of trade rules and environmental justifications, the dispute also significantly engaged with the fundamental WTO principle of special and differential treatment for developing countries. This principle advocates that developed countries should consider the special needs of developing countries during the formulation and implementation of technical regulations. Rooted in Article 12.3 of the TBT Agreement, this provision mandates that developed nations consider the "special development, financial and trade needs" of developing country Members when crafting technical regulations, ensuring these don't create "unnecessary obstacles to exports."

In this dispute, the complainants argued the European Union violated Article 12.3 by failing to account for its specific developing country circumstances during the preparation of the disputed technical regulations and conformity assessment procedures. The complainants contended this oversight unnecessarily hindered its exports. The Panel established a three-part test for proving a violation: The complainants must be a "developing country Member," possess "special development, financial and trade needs" relevant to the measures, and show the EU failed to "take account of" those needs. After evaluating the evidence, the Panel concluded that the complainants failed to establish a violation of Article 12.3 of the TBT Agreement.

5. French Biofuel Tax as a Subsidy (SCM Agreement Claims)

A significant aspect of the dispute involved the complainant's challenge to the French Taxe Incitative à l'Incorporation de Biocarburants (TIRIB) as an illegal subsidy under the SCM Agreement. The complainants argued it represented "government revenue foregone" or "income support." However, the Panel rejected these claims, finding no foregone revenue as the TIRIB was an integrated tax, and no income support. Even assuming a subsidy, the complainants failed to prove adverse effects, as the Panel determined that without the TIRIB, no commercial market for any biofuels would exist in France, meaning the issue was palm oil's exclusion, not the subsidy itself. Indonesia's additional claim of a "prohibited subsidy" contingent on domestic use was also rejected because other imported biofuels were eligible. Consequently, the Panel concluded the complainants failed to establish the TIRIB as a subsidy or that it caused adverse effects.



Schedule

TIME	AGENDA
12:00 – 12:10	Welcome Remarks
12:100 – 12:40	Presentation
12:40 – 01:20	Expert Discussion
01:20 – 01:30	Q & A Session
<i>Lunch</i>	