Commission Implementing Regulation (EU) 2020/2098 of 15 December 2020 initiating a review of Council Implementing Regulations (EU) No 443/2011 and (EU) No 444/2011 extending, respectively, the definitive countervailing and anti-dumping duty on imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, for the purposes of determining the possibility of granting an exemption from those measures to one Canadian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2098

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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)] ('the basic anti-dumping Regulation') and in particular Articles 13(4) and 14(5) thereof and to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(2)] ('the basic anti-subsidy Regulation') and in particular to Article 23(6) thereof,

Having regard to Commission Implementing Regulation (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009[(3)] and Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009[(4)],

After informing the Member States,

Whereas:

1. REQUEST

(1) The European Commission ('the Commission') received a request for an exemption from the anti-dumping and countervailing measures applicable to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, as

far as the Verbio Diesel Canada Corporation ('the applicant') is concerned, pursuant to Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation.

(2) The request was lodged on 13 July 2020 by the applicant, who is an exporting producer of biodiesel in Canada.

2. PRODUCT UNDER REVIEW

(3) The product under review is fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro- treatment, of non-fossil origin, consigned from Canada, whether declared as originating in Canada or not, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11).

3. EXISTING MEASURES

(4) By Regulations (EC) No 598/2009[(5)] and (EC) No 599/2009[(6)], the Council imposed definitive countervailing and anti-dumping duties on imports of biodiesel originating in the United States of America.

(5) These measures were extended by Council Implementing Regulations (EU) No 443/2011[(7)] and (EU) No 444/2011[(8)], to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not.

(6) The measures currently in force are imposed by Implementing Regulation (EU) 2015/1518 following an expiry review pursuant to Article 11(2) of the basic anti-dumping Regulation and by Commission Implementing Regulation (EU) 2015/1519[(9)] following an expiry review pursuant to Article 18(2) of the basic anti-subsidy Regulation.

(7) On 14 September 2020, the Commission initiated two expiry reviews pursuant to, respectively, Article 11(2) of the basic anti-dumping Regulation[(10)] and Article 18(2) of the basic anti-subsidy Regulation[(11)]. These review investigations are ongoing.

4. GROUNDS FOR THE REVIEW

(8) The applicant alleged that it did not export the product under review to the Union during the investigation period used in the investigation that led to the extended measures as adopted by Implementing Regulations (EU) No 443/2011 and (EU) No 444/2011, namely the period from 1 April 2009 to 30 June 2010 ('the original IP'). The applicant was only legally created in 2019. The plant did not even exist in the original IP. Actually, the plant was built and opened in 2012.

(9) In addition, the applicant provided evidence that it is a genuine producer and alleged that it has not circumvented the existing measures.

(10) The applicant further claimed that after the original IP it exported the product concerned to the Union, in December 2019 and in June 2020 respectively.

5. PROCEDURE

5.1. Initiation

(11) The Commission examined the evidence available and concluded that there was sufficient evidence to justify the initiation of an investigation pursuant to Article 13(4) of the basic anti-dumping Regulation and to Article 23(6) of the basic anti-subsidy Regulation for the purpose of determining the possibility of granting the applicant an exemption from the extended measures.

(12) The Union industry known to be concerned was informed of the request for a review and was given an opportunity to comment. No comments were received.

(13) In its investigation, the Commission will pay particular attention to the applicant's relationship with the companies subject to the existing measures in order to ensure that it was not established or used to circumvent the measures. The Commission will also consider whether particular monitoring conditions should be imposed in case the investigation will conclude that granting the exemption is warranted.

5.2. Repeal of the existing anti-dumping measures and registration of imports

(14) In line with Article 11(4) of the basic anti-dumping Regulation, in cases ofnew exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based, the anti-dumping duty in force should be repealed with regard to imports of the product under review which are produced and sold for export to the Union by the applicant.

(15) At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic anti-dumping Regulation in order to ensure that, should the review result in a finding of circumvention in respect of the applicant, anti-dumping duties can be levied from the date of the registration of these imports. The amount of the applicant's possible future liabilities would be equal to the duty applicable to 'all other companies' in Article 1(2) of Implementing Regulation (EU) 2015/1518 (172,2 EUR/tonne).

5.3. Existing anti-subsidy measures

(16) Since the basic anti-subsidy Regulation does not provide for repealing the countervailing duties in cases where exporters were not individually investigated during the original investigation, these measures will remain in force. Only should the review result in the finding that the applicant is entitled to an exemption, the anti-subsidy measures in force will be repealed as regards the applicant.

5.4. Review investigation period

(17) The investigation will cover the period from 1 April 2009 to 30 September 2020 ('review investigation period').

5.5. **Investigating the applicant**

(18) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant. The applicant must submit the completed questionnaire within 37 days of the date of entry into force of this Regulation, unless otherwise specified, pursuant to Article 6(2) of the basic anti-dumping Regulation and Article 11(2) of the basic anti-subsidy Regulation.

5.6. **Other written submissions**

(19) Subject to the provisions of this Regulation, all interested parties are invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of entry into force of this Regulation.

5.7. **Possibility to be heard by the Commission investigation services**

(20) All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initiation stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.8. **Instructions for making written submissions and sending completed questionnaires and correspondence**

(21) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing the Commission (a) to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.

(22) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Sensitive'. Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

(23) Parties providing 'Sensitive' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic anti-dumping Regulation and Article 29(2) of the basic anti-subsidy Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently

detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

(24) If a party providing 'Sensitive' information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

(25) Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which should be submitted on a portable digital storage medium (CD-ROM, DVD, USB flash drive) by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf

(26) The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission

Directorate-General for Trade

Directorate G

Office: CHAR 04/039

1040 Brussels

BELGIUM

Email: TRADE-R731-BIODIESEL-EXEMPTION@ec.europa.eu

6. POSSIBILITY TO COMMENT ON OTHER PARTIES' SUBMISSIONS

(27) In order to guarantee the rights of defence, interested parties should have the possibility to comment on information submitted by other interested parties. When doing so, interested parties may only address issues raised in the other interested parties'