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

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 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[(1)], and in particular Article 12 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 6 December 2018, the European Commission (the 'Commission') initiated an anti-subsidy investigation with regard to imports into the European Union (the 'Union') of biodiesel originating in Indonesia (the 'country concerned') pursuant to Article 10 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not member of the European Union ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union*[(2)] (the 'Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 22 October 2018 by the European Biodiesel Board ('EBB' or the 'complainant') on behalf of producers representing 32 % of total Union production. Producers representing 63 % of the total Union production of biodiesel supported the complaint.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of Indonesia ('GOI') that it had received a properly documented complaint, and invited the GOI for consultations in accordance with Article 10(7) of the basic Regulation. The GOI accepted the offer for consultations, which were held on 3 December 2018. During the consultations as well as subsequent exchanges with the GOI, due note was taken of the comments submitted by the GOI. However, no mutually agreed solution could be reached.

(4) After the publication of the Notice of Initiation, the Commission received comments regarding the initiation from the Wilmar Group, an exporting producer ('Wilmar'). In its comments, Wilmar submitted that:

(a) the complaint did not include sufficient evidence of subsidisation to warrant an opening of procedure;

(b) the GOI has not put in place any subsidy scheme to the benefit of the biodiesel industry; and

(c) even if a subsidy scheme of the GOI was to be found, Wilmar did not receive any subsidy under that scheme.

(5) The GOI similarly argued at the later stage of the investigation that the complaint did not include sufficient evidence of subsidisation to warrant an opening of procedure.

(6) With reference to the various subsidy schemes identified in the complaint, Wilmar preliminarily alleged that EBB failed to provide sufficient evidence of the existence of any subsidy and that therefore the complaint is unfounded.

(7) With particular reference to the export tax and levy imposed by the GOI on crude palm oil ('CPO'), Wilmar submitted that the complainant failed to provide sufficient evidence of the required entrustment or direction of Indonesian CPO producers by the GOI.

(8) Furthermore, Wilmar submitted that none of the subsidy schemes identified in the complaint are export subsidies. In addition, according to Wilmar, the alleged subsidy schemes did not induce Indonesian biodiesel producers to sell biodiesel for export, rather they seek to reach out to the domestic Indonesian blending targets of biodiesel with mineral diesel[(3)].

(9) Finally, Wilmar submitted that the complaint failed to provide sufficient evidence of threat of material injury caused by Indonesian biodiesel imports into the Union and that, in any event, imports of Indonesian biodiesel did not create any such injury.

(10) Concerning the evidence of injurious subsidisation at initiation stage, the Commission made the open version of the complaint available and provided its analysis on the evidence available at that stage in the memorandum on sufficiency of evidence, on the basis of which the investigation was initiated. Therefore, contrary to what Wilmar alleged, the Commission considered and substantiated in the memorandum that there was sufficient evidence tending to show the existence of injurious subsidisation.

(11) On 19 June 2019 the Commission received a submission from Wilmar arguing inter alia that the Union industry was not under a threat of material injury from imports of Indonesian biodiesel.

(12) However, the Notice of Initiation specified that any information for the stage of provisional findings should be submitted within 70 days from the date of its publication. This deadline expired on 14 February 2019. Therefore, the part of the submission dealing with threat of injury could not be addressed at provisional stage and will be addressed instead at the definitive stage of the investigation. Moreover,

section 5.2 of the Notice of Initiation specified that any comment on the complaint, including matters pertaining to injury and causality should be submitted within 37 days from the date of its publication. Interested parties having filed written submissions or provided any data after 14 February 2019 are invited to indicate together with their comments on the provisional measures whether they still consider those submissions relevant for the current investigation, indicating how such information should be taken into account for the definitive stage.

1.2. **Investigation period and period considered**

(13) The investigation of subsidisation and injury covered the period from 1 October 2017 to 30 September 2018 (the 'investigation period' or the 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2015 to the end of the investigation period (the 'period considered'). Where appropriate, the Commission also examined post-IP data.

1.3. **Interested parties**

(14) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOI, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(15) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. **Sampling**

(16) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.4.1. *Sampling of Union producers*

(17) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest representative quantity of production, which could reasonably be investigated within the time available.

(18) The provisional sample consisted of three Union producers and represented a broad geographical spread. The sampled Union producers accounted for more than 18 % of the total production volume of the Union industry. The Commission invited interested parties to comment on the provisional sample.

(19) The Commission received comments on the provisional sample from Wilmar. Wilmar commented on the size of the sample, saying that three producers was not large enough a sample, and requested that another company group consisting of two producers, Biopetrol, be added to the sample of Union producers.

(20) The Commission considered that the sample with the three largest producers of biodiesel in the Union is representative (including geographically) and a larger sample could not be reasonably investigated within the time available. Therefore, the claim was rejected.

1.4.2. *Sampling of importers*

(21) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(22) Two unrelated importers provided the requested information and agreed to be included in the sample. One of them imported negligible amounts and did not resell it during the IP, so the Commission only investigated the other unrelated importer. In view of the low number of unrelated importers that cooperated the Commission decided that sampling was not necessary.

1.4.3. *Sampling of exporting producers in Indonesia*

(23) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Indonesia to provide the information specified in the Notice of Initiation. In addition, the Commission asked the authorities of Indonesia to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(24) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. The responding companies or groups of companies accounted for 100 % of exports to the Union during the investigation period. Due to the limited number of exporting producers and the high level of cooperation, the Commission decided not to carry out sampling but rather to investigate all Indonesian exporting producers.

1.4.4. *Questionnaire replies and verification visits*

(25) The Commission sent questionnaires to the GOI, to the four exporting producers, to the three sampled Union producers, and to two unrelated importers of biodiesel.

(26) The Commission received questionnaire replies from the GOI, all groups of exporting producers, all sampled Union producers and both unrelated importers.

(27) The Commission sought and verified all the information deemed necessary for a determination of subsidy, resulting injury (including threat of injury) and Union interest. A verification visit took place at the premises of the GOI, the Ministry of Trade of the Republic of Indonesia in Jakarta, during which officials from other relevant ministries also participated.

(28) Verification visits under Article 26 of the basic Regulation were carried out at the premises of the following companies:

Union producers and related companies:

— Masol Iberia Biofuel, S.L.U., El Grao (Castellón) and Campa Iberia S.A.U., Barcelona, Spain

— Saipol, Grand-Couronne, France

— Verbio Vereinigte BioEnergie AG, Leipzig, Germany

Unrelated importer:

— Gunvor BV, Geneva, Switzerland[(4)]

Exporting producers in Indonesia and related companies:

— Wilmar Group:
  — PT Wilmar Nabati Indonesia, Medan
  — PT Wilmar Bioenergi Indonesia, Medan
  — Wilmar Trading Pte. Ltd., Singapore

— Musim Mas Group:
  — PT Intibenua Perkasatama, Medan
  — PT Musim Mas, Medan
  — Inter-Continental Oils & Fats Pte. Ltd., Singapore
  — Campa Iberia S.A.U., Barcelona, Spain
  — IM Biofuel Italy S.R.L., Milan, Italy

— PT Ciliandra Perkasa, Jakarta, and First Resources Trading Pte. Ltd., Singapore

— Permata Group:
  — PT Pelita Agung Agrindustri, Medan
  — PT Permata Hijau Palm Oleo, Medan
  — Virgoz Oils & Fats Pte. Ltd., Singapore

(29) Following the reply to the questionnaires, the deficiency letters and the verification visits, and as further explained in recitals (219) to (227) below, the Commission observed that the GOI and Wilmar did not fully cooperate with the investigation. More precisely:

(a) PT Perkebunan Nusantara (‘PTPN’), a CPO producer wholly owned by the GOI, did not respond to Appendix B to the GOI's questionnaire within the stipulated deadline, albeit being one of the undertakings that have been requested to reply; and,

(b) Wilmar did not provide a complete answer to Table 2 of the Deficiency Letter, and particularly provided the requested data only partially.

(30) The Commission therefore issued an Article 28 letter to both the GOI and Wilmar Group, limited to the specific information they did not provide. Hence, the Commission used facts available with respect to the missing information.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned