Commission Implementing Regulation (EU) 2019/765 of 14 May 2019 repealing the anti-dumping duty on imports of bioethanol originating in the United States of America and terminating the proceedings in respect of such imports, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2019/765

of 14 May 2019

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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 Regulation'), and in particular Article 11(2) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) Following an anti-dumping investigation ('the original investigation'), by Implementing Regulation (EU) No 157/2013[(2)], the Council imposed a definitive anti-dumping duty of EUR 62,3 per metric tonne ('tonne') on imports of bioethanol originating in the United States of America ('US' or 'the country concerned'). These measures will hereinafter be referred to as 'the measures in force'.

1.2. Request for an expiry review

(2) Following the publication of a notice of impending expiry[(3)] of the measures in force, on 7 November 2017 the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036.

(3) The request was lodged by ePure ('the applicant'), on behalf of producers representing more than 25 % of the total Union production of bioethanol.

(4) The request was based on the grounds that the expiry of measures would be likely to result in the continuation and recurrence of dumping and a continuation and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

(5) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 20 February 2018, by notice published in the *Official Journal of the European Union*[4] ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. **Interested parties**

(6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed other known Union producers, the known exporting producers, traders/blenders and the authorities of the US, known importers, suppliers and users, as well as traders about the initiation of the investigation and invited them to participate.

(7) 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.

1.5. **Sampling**

(8) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.1. *Sampling of exporting producers and traders/blenders in the US*

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

(10) Eight producers of biofuels came forward. However, none of them produced the product under review.

(11) Furthermore, three US biofuel associations came forward and were registered as interested parties.

1.5.2. *Sampling of Union producers*

(12) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The sample was primarily based on production volume, but a good geographical spread as well as a representation of different groups was also achieved. The proposed sample consisted of four Union producers and the Commission invited interested parties to comment on the provisional sample.

(13) Following the comments received, one preliminarily sampled producer was replaced due to its relationship with another preliminarily sampled producer. The four producers in the sample accounted for 25 % of the Union production of bioethanol during the review investigation period. The sample is representative of the Union industry.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/765. (See end of Document for details)*

1.5.3. *Sampling of importers*

(14) 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.

(15) Three unrelated importers provided the requested information and agreed to be included in the sample. On that basis, the Commission decided that sampling was not necessary.

1.6. **Non-cooperation**

(16) As none of the US producers that came forward during the sampling exercise produced the product under review in the review investigation period, the Commission had to apply facts available with regard to the exporting producers, in accordance with Article 18 of the basic Regulation.

(17) The Commission notified the US authorities of the application of Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments.

(18) Although none of the exporting producers cooperated, the three US biofuel associations that came forward made submissions throughout the investigation. Those submissions were taken into consideration.

1.7. **Replies to the questionnaire**

(19) The Commission sent questionnaires to the four sampled Union producers and the three unrelated importers that came forward.

(20) Questionnaire replies were received from the four sampled Union producers and the three unrelated importers. Two of the three unrelated importers did not in fact import the product under review from the country considered in the review investigation period and were therefore not taken into further consideration. The questionnaire reply by the remaining unrelated importer was duly taken into account.

1.8. **Verification visits**

(21) The Commission sought and verified all the information deemed necessary for a determination of likelihood of continuation or recurrence of dumping, likelihood of continuation or recurrence of injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

— Pannonia Ethanol Zrt., Dunaföldvar, Hungary
— CropEnergies Bioethanol GmbH, Mannheim, Germany
— Cristanol, Bazancourt, France
— Alco Bio Fuel N.V., Ghent, Belgium

Importers

— Shell Trading Rotterdam B.V., Rotterdam, the Netherlands

1.9. **Further procedure**

(22) Despite the non-cooperation of the exporting producers, as explained in recitals (10) and (16) to (18), the three US biofuel associations and the complainant submitted several sets of comments regarding initiation. In view of the conclusions under chapter 3 below, these comments are not further addressed in this document.

(23) On 1 March 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to repeal the anti-dumping duty in force ('the disclosure'). All parties were granted a period within which they could make comments on the disclosure.

(24) On 12 March 2019, the applicant made a written submission making known its views on the Commission's findings. In summary, the applicant contested the Commission's preliminary conclusion that dumping was unlikely to recur if measures were allowed to lapse.

(25) In view of these comments, the three US biofuel associations requested a hearing with the Commission's services which took place on 19 March 2019. Subsequent to this hearing, these associations sent additional documents to the Commission to support certain statements. On 20 March 2019, the applicant explained its views in a hearing.

(26) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.10. **Investigation period and period considered**

(27) The investigation of dumping and injury covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

2.1. **Product under review**

(28) The product under review is bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) intended for fuel uses originating in the US, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31,

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ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 50, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 99 92 (TARIC codes 2207 10 00 12, 2207 20 00 12, 2208 90 99 12, 2710 12 21 11, 2710 12 25 92, 2710 12 31 11, 2710 12 41 11, 2710 12 45 11, 2710 12 49 11, 2710 12 50 11, 2710 12 70 11, 2710 12 90 11, 3814 00 10 11, 3814 00 90 71, 3820 00 00 11 and 3824 99 92 66). Bioethanol can be produced from various agricultural feedstock, such as sugar cane, sugar beet, potatoes, manioc and corn. There can be minor differences in the production process between producers.

(29) The types of bioethanol and bioethanol in blends covered by this expiry review, despite possible differences in terms of feedstock used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible minor variations in the product under review do not alter its basic definition or its characteristics.

(30) Bioethanol destined for applications other than fuel use was not covered by the scope of the original investigation and is therefore also not covered by this expiry review.

2.2. Like product

(31) In the original investigation, the Commission established that bioethanol manufactured by the Union industry and sold on the Union market has similar basic physical, chemical and technical characteristics when compared to bioethanol exported to the Union from the US. Despite the use of a range of different agricultural feedstock as raw material, bioethanol originating in the US is interchangeable with bioethanol produced in the Union.

(32) The main difference between the majority of the bioethanol sold on the US market and the bioethanol sold on the Union market concerns the different standards for moisture content. US producers typically produce bioethanol with a water content of 0,5 % or more while the specifications for the Union market require a lower water content of maximum 0,3 %, measured according to the standard EN 15376, requiring additional refinement from producers of third countries in order to meet the specifications for the Union market.

(33) The Commission did not receive any comments on the like product from the interested parties that made comments in this expiry review. Therefore, the Commission confirmed that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

(34) None of the US exporting producers or traders/blenders of the product under review cooperated with the investigation. The Commission therefore used facts available, in accordance with Article 18 of the basic Regulation, to establish the