Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina

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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)] ('the basic Regulation'), and in particular Article 15 thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 31 January 2018, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the European Union of biodiesel originating in Argentina ('the country concerned') on the basis of Article 10 of Regulation (EU) 2016/1037. 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 18 December 2017 by the European Biodiesel Board ('EBB' or 'the complainant') on behalf of producers. The complainant represents around 70 % of the total Union production of biodiesel. The complaint contained evidence of subsidisation and of resulting threat of injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of Argentina ('GOA')[(3)] that it had received a properly documented complaint, and invited the GOA for consultations in accordance with Article 10(7) of the basic Regulation. The GOA accepted the offer for consultations, which were held on 24 January 2018. During the consultations as well as subsequent exchanges with the GOA, due note was taken of the comments submitted by the GOA. However, no mutually agreed solution could be reached.

(4) Following the Notice of Initiation, the Commission received comments regarding the initiation from the Argentinian Chamber of Biofuels (Cámara Argentina de Biocombustibles, 'CARBIO'). In their comments, CARBIO stated that the Argentinian biodiesel industry is not subsidised, and that the imports of Argentinian biodiesel pose no threat of material injury to the Union industry.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/244. (See end of Document for details)*

(5) Concerning the evidence of 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.

(6) Concerning the evidence on threat of injury, CARBIO argued that the complainant failed to provide sufficient evidence concerning the criteria in Article 8(8) of the basic Regulation, in particular the significant rise in imports, the freely disposable capacity in Argentina and the price effect of Argentinian imports. The argumentation of CARBIO was, however, largely based on overly pessimistic estimations of the development of Argentinian exports in 2018, which CARBIO estimated at 480 000 tonnes for the full year 2018 to all countries of the world, without substantiating that low figure which was 70 % below the corresponding figure for 2016 and 2017[(4)]. At such a low level, Argentinian imports would allegedly not pose a threat of injury to the Union industry. The Commission considered the evidence provided in the complaint (based on actual imports until August 2017 and estimations for 2018 based on production figures in the GAIN report[(5)]) that indicated much higher estimated level of imports. As regards production capacity, CARBIO confirmed that the production capacity in Argentina indeed significantly exceeds the domestic consumption by more than 3 million tonnes.

(7) Consequently, those claims were rejected.

1.2. **Registration of imports**

(8) On 21 February 2018, the complainant submitted a request for registration of imports of biodiesel originating in Argentina under Article 24(5) of the basic Regulation. On 24 May 2018, the Commission published Implementing Regulation (EU) 2018/756 ('the registration Regulation')[(6)] making imports of biodiesel originating in Argentina subject to registration as of 25 May 2018 onwards.

(9) Responding to the request for registration, interested parties submitted comments that the Commission addressed in the registration Regulation. The Commission had at its disposal sufficient evidence justifying the need to register imports.

(10) Under Article 24(5) of the basic Regulation, imports of the product concerned are subject to registration for the purpose of ensuring that should the investigation result in findings leading to the imposition of countervailing duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions.

(11) Following the publication of the registration Regulation, the Commission received comments in this regard from the GOA and CARBIO.

(12) The comments of the GOA concerned the allegation that the Commission failed to demonstrate sufficient evidence of subsidisation and to demonstrate that injury to the Union industry was caused by massive imports of Argentinian biodiesel in a relatively short period.

(13) As explained in recitals (5) to (7), the Commission considered that it had sufficient evidence of subsidisation and threat of injury at the time of initiation. In addition, in recital (14) of the registration Regulation, the Commission provided evidence of a massive increase of Argentinian imports of biodiesel in absolute terms and in terms of market share in the period between August 2017 and March 2018, which could show the existence of material injury towards the end of the investigation period. Consequently, those allegations were rejected.

1.3. **Investigation period and period considered**

(14) The investigation of subsidisation and injury covered the period from 1 January 2017 to 31 December 2017 ('the 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').

1.4. **Interested parties**

(15) 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 GOA, 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.

(16) 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**

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

1.5.1. *Sampling of Union producers*

(18) 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 production, which could reasonably be investigated within the time available.

(19) The provisional sample consisted of three Union producers and represented a broad geographical spread. The sampled Union producers accounted for 19 % of the total production volume of the Union industry. The Commission invited interested parties to comment on the provisional sample.

(20) The Commission received substantiated comments on the provisional sample from CARBIO, Greenergy Fuels Limited and from the complainant. Recitals (310) to (313) provide a more detailed analysis of those comments.

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(21) As a result, the Commission replaced one of the Union producers in the provisional sample with another. The final sample consisted of three Union producers located in three different Member States. It accounted for over 23 % of Union production.

1.5.2. *Sampling of importers*

(22) 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.

(23) Two unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number of unrelated importers, the Commission decided that sampling was not necessary.

1.5.3. *Sampling of exporting producers in Argentina*

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

(25) Nine producers in the country concerned provided the requested information and agreed to be included in the sample. The Commission excluded one company from the sample, as it did not export biodiesel to the Union in the investigation period. The remaining eight companies or groups of companies accounted for 100 % of exports to the Union during the investigation period. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of three groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available:

— Group Renova (Molinos Agro SA, Oleaginosa Moreno Hermanos SACIFIyA, Vicentin SAIC), Argentina,

— Group T6 (Aceitera General Deheza SA, Bunge Argentina SA), Argentina,

— Louis Dreyfus Commodities (‘LDC’) Argentina SA, Argentina.

(26) The sampled groups of exporting producers represented 84 % of the total exports to the Union of the product concerned during the investigation period.

(27) In accordance with Article 27(2) of the basic Regulation, the Commission consulted all known exporting producers concerned and the GOA on the selection of the sample. The Commission received no comments on the proposed sample.

1.5.4. *Individual examination*

(28) No exporting producer, which was not included in the sample, requested individual examination under Article 27(3) of the basic Regulation.

1.6. **Questionnaire replies and verification visits**

(29) The Commission sent questionnaires to the GOA, to the three sampled groups of exporting producers, to the three sampled Union producers, and to the two unrelated importers that had come forward.

(30) The Commission received questionnaire replies from the GOA, all sampled groups of exporting producers, all sampled Union producers but only one of the two cooperating unrelated importers.

(31) The Commission sought and verified all the information deemed necessary for a determination of subsidy, resulting threat of injury and Union interest. A verification visit took place at the premises of the Argentinian Ministries of Agroindustry, Foreign Affairs, Production and Taxation, during which officials from other relevant ministries also participated. Verification visits also took place at the premises of the Banco de Córdoba, the Banco de la Provincia de Buenos Aires, the Banco de la Ciudad de Buenos Aires, the Banco Central de la República Argentina and the Banco de la Nación Argentina.

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

Union producers:

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

— Saipol, Grand-Couronne, France,

— Verbio Vereinigte BioEnergie AG, Leipzig, Germany;

Sampled exporting producers in Argentina:

— Group Renova:
  — Molinos Agro SA, Buenos Aires,
  — Oleaginosa Moreno Hermanos SACIFIyA, Buenos Aires,
  — Vicentin SAIC, Buenos Aires;

— Group T6:
  — Aceitera General Deheza SA, Buenos Aires,
  — Bunge Argentina SA, Buenos Aires;

— LDC Argentina SA, Buenos Aires.

1.7. **Non-imposition of provisional measures and subsequent procedure**

(33) Given that the Commission found it necessary to collect further information on developments after the investigation period, which could further confirm the Commission's preliminary findings and shed more light on the Union interest, the Commission decided not to impose provisional measures in this case.

(34) On 21 September 2018, by means of an information document describing its preliminary findings, the Commission informed all interested parties that no provisional countervailing duties would be imposed on imports into the Union of biodiesel originating in Argentina. On 8 October 2018, six Member States (France,