Commission Implementing Regulation (EU) 2018/1121 of 10 August 2018 amending Commission Implementing Regulation (EU) 2015/1518 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

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1121

of 10 August 2018

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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)],

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[(2)], and in particular Article 1(6) thereof,

Whereas:

A. MEASURES IN FORCE

(1) By Council Regulation (EC) No 599/2009 of 7 July 2009[(3)], the Council imposed a definitive anti-dumping duty on imports of biodiesel originating in the United States of America ('USA').

(2) In the original investigation, a large number of exporting producers from the USA made themselves known. As a result, the Commission selected a sample of American exporting producers to be investigated.

(3) The Council imposed individual duty rates on imports of biodiesel originating in the USA ranging from EUR 0 to 198 per tonne net on the sampled companies, and a weighted average duty of EUR 115,6 per tonne net on other cooperating companies not included in the sample. In addition, a duty rate of EUR 172,2 per tonne net was imposed on imports of biodiesel from all other American companies.

(4) Following an expiry review based on Article 11(2) of Regulation (EC) No 1225/2009, the original measures were prolonged for five years by Implementing Regulation (EU) 2015/1518.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1121. (See end of Document for details)*

(5) Commission Implementing Regulation (EU) 2017/1598[4] amended Implementing Regulation (EU) 2015/1518 to include Article 1(6) allowing exporting producers to request a new exporting producer treatment.

(6) Article 1(6) of Implementing Regulation (EU) 2015/1518 states that the Commission may amend Annex I, in order to attribute the duty applicable to cooperating producers not included in the sample, namely EUR 115,6 per tonne net, where any party from the USA provides sufficient evidence to the Commission that:

(a) it did not export biodiesel originating in the USA during the period of investigation (1 April 2007-31 March 2008);

(b) it is not related to an exporter or producer subject to the measures imposed by that Regulation; and

(c) it has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

B. REQUESTS FOR NEW EXPORTING PRODUCER TREATMENT

(7) Following the publication of Implementing Regulation (EU) 2015/1518, an American company, Organic Technologies (‘the applicant’), came forward claiming that it met all three criteria set out in recital 6 and should be granted new exporting producer treatment. The applicant provided information and supporting evidence in response to a questionnaire from the Commission. After an initial analysis of the questionnaire response, the Commission sent the applicant a letter requesting further information. The applicant responded.

(8) As for criterion (a), the applicant claimed that it existed during the original investigation period. It also claimed that it started to produce biodiesel in 2009, that is, after the original investigation period. The Commission verified the sales ledgers provided by the applicant. The applicant showed that it started production of biodiesel in 2009 and the first sales outside of the USA took place only in 2016. Therefore, the Commission accepted that the applicant did not export biodiesel to the Union during the original investigation period. Hence, the applicant complies with criterion (a).

(9) With regard to the criterion (b), namely that the applicant is not related to an exporter or producer subject to anti-dumping measures imposed by Implementing Regulation (EU) 2015/1518, the Commission established, on the basis of the documents submitted by the applicant, that the applicant does not have any related companies which are subject to the measures. Therefore, the applicant complies with criterion (b).

(10) With regard to the criterion (c), the Commission also established that the applicant had entered into an irrevocable contractual obligation to export a significant quantity of the product concerned to the Union in 2018. In that respect, the applicant provided a sales contract for the delivery of the product concerned in 2018, which satisfied this criterion. Therefore, the applicant complies with criterion (c).