Commission Implementing Regulation (EU) 2018/756 of 23 May 2018 making imports of biodiesel originating in Argentina subject to registration

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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 24(5) thereof,

After informing the Member States,

Whereas:

(1) On 31 January 2018, the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)] ('the notice of initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of biodiesel originating in Argentina following a complaint lodged on 18 December 2017 by the European Biodiesel Board ('the complainant') on behalf of producers representing more than 25 % of the total Union production of biodiesel.

1. PRODUCT CONCERNED

(2) The product subject to registration ('the product concerned') is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 12 and 3824 99 92 20), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30) and originating in Argentina. These CN and TARIC codes are given for information only.

2. REQUEST

(3) The complainant first requested the Commission to register imports of the product concerned in the complaint. Then on 21 February 2018, the complainant submitted a registration request pursuant to Article 24(5) of Regulation (EU) 2016/1037 of the European Parliament and of the Council ('the basic Regulation'). The

complainant subsequently provided additional comments and updated information, inter alia, in submissions dated 16 March 2018 and 27 March 2018, respectively. The complainant requested that imports of the product concerned be made subject to registration so that measures may subsequently be applied against those imports from the date of such registration, provided all conditions set out in the basic Regulation are met.

3. GROUNDS FOR REGISTRATION

(4) According to Article 24(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration, provided all conditions set out in the basic Regulation are met. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.

(5) According to the complainant, registration is justified as there is sufficient evidence of an actual and significant risk of severe injury being caused to the Union biodiesel industry by massive imports of subsidised biodiesel in a short period of time, in particular as of 2018 (namely after the period of investigation, 'post-IP'). The complainant further claims that there exists sufficient evidence of subsidised imports of biodiesel from Argentina, of critical circumstances resulting from such subsidised imports and of the beginning of the materialisation of injury due to the subsidised imports.

(6) The Commission examined the request also in the light of Article 16(4) of the basic Regulation, which sets out the conditions for collecting duties on registered imports. The Commission's examination also took into account comments submitted by Camara Argentina de Biocombustibiles ('CARBIO') on 21 March 2018 and the Government of Argentina on 3 April 2018, which argued, inter alia, that the complainant's request for registration does not meet the conditions established in Articles 16(4) and 24(5) of the basic Regulation.

(7) As explained in recitals (8) to (16), the Commission took all submissions into account and considered whether there is sufficient evidence that there will be critical circumstances where, for the product concerned, injury which is difficult to repair will be caused by massive imports in a relatively short period of a product benefitting from countervailable subsidies and whether it may be deemed necessary to assess countervailing duties retroactively on those imports in order to preclude the recurrence of such injury.

3.1. Critical circumstances where injury, which is difficult to repair, is caused by massive imports of a subsidised product in a relatively short period

(8) As regards subsidisation, the Commission has at its disposal sufficient evidence tending to show that imports of the product concerned from Argentina are being subsidised. The alleged subsidies consist, inter alia, of:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/756. (See end of Document for details)*

(i) government provision of goods or services for less than adequate remuneration, such as the provision of soybeans;

(ii) government purchase of goods for more than adequate remuneration and/ or income or price support, such as the government mandated purchase of biodiesel (Biodiesel Supply Agreement);

(iii) direct transfer of funds, such as provision of loans and export financing on preferential terms, including the preferential lending by the National Bank of Argentina (Banco de la Nación Argentina); and

(iv) government revenue forgone or not collected, such as accelerated depreciation for biodiesel producers under the Biofuels Law of 2006, exemption and deferral of the minimum presumed income tax for biodiesel producers under the Biofuels Law of 2006, and several provincial tax exemptions.

(9) The evidence of subsidisation was made available in the open version of the complaint and was further analysed in the memorandum on sufficiency of evidence.

(10) It is alleged that the measures described in recital (8) amount to subsidies because they involve a financial contribution from the government of Argentina or other regional governments (including public bodies) and confer a benefit to the exporting producers of the product concerned. The measures are alleged to be limited to certain enterprises or industry or group of enterprises and are therefore specific and countervailable.

(11) Therefore, the available evidence at this stage tends to show that the exports of the product concerned are benefiting from countervailable subsidies.

(12) Furthermore, on the basis of the latest information provided by the complainant in its request for registration,[(3)] the Commission has at its disposal sufficient evidence that the exporting producers' subsidy practices are starting to cause material injury (and not only a threat of material injury) to the Union industry.

(13) The request for registration, together with the information submitted subsequently, provides sufficient evidence of critical circumstances, whereby towards the end of the investigation period ('IP') (1 January 2017 to 31 December 2017) and in the first quarter (January 2018 – March 2018) of the post-IP period, injury, which will be difficult to repair, started to materialise.

(14) Indeed, this injury is being caused by massive imports, benefiting from countervailable subsidies, in a relatively short period of time. The evidence shows a massive increase of imports of the product concerned in absolute terms and in terms of market share in the period between August 2017 and the first quarter of the post-IP period. Specifically, the evidence available shows that imports of the product concerned from Argentina increased from 0 tonnes in August 2017 to 410 600 tonnes[(4)] in the first quarter of the post-IP period with a corresponding steep increase in market share from 0 % to 10 %[(5)]. Additional evidence received shows that between September 2017 and

February 2018, Argentina exported 837 000 tonnes of the product concerned evidencing that further substantial imports can be expected in the period following February 2018[6].

(15) The evidence further shows that the massive increase of imports of the product concerned from Argentina is starting to result in substantial adverse effects on the situation of the Union industry, including depressed price levels. Between 1 September 2017 and 31 March 2018 prices of FAME (fatty-acid methyl esters) biodiesel dropped by 12,3 %[7].

(16) In addition, the evidence submitted by the complainant in its request for registration shows that the deteriorating market situation is resulting in planned reduction of production and/or recourse to partial activity in at least three companies in the Union. This will lead to a significant reduction in Union production and sales and will have a negative impact on employment in the Union industry.

(17) Finally, the Commission assessed whether the material injury which has started to materialise after the investigation period is difficult to repair. In this regard, it is noted that the product concerned is very sensitive to price changes, as evidenced by the low level of imports of the product concerned following the imposition of anti-dumping duties in 2013[8] and the subsequent increase of imports following the reduction of anti-dumping duties in September 2017[9]. There is a risk that an increasing number of Union producers will suffer from diminishing sales and reduced production levels if imports continue at the current increased levels at allegedly subsidised prices from Argentina as evidenced so far. It is clear that that risk will negatively impact employment and the overall performance of Union producers. Thus, the reduced income and permanent loss of market share constitutes a material injury which is difficult to repair.

3.2. Preclusion of recurrence of injury

(18) Given the data set out in recitals (14) and (15) and the considerations laid down in recital (17), the Commission deemed it necessary to prepare the potential retroactive imposition of measures by imposing registration in order to preclude the recurrence of such injury. Indeed, the post-IP market conditions tend to confirm that the situation of the domestic industry is deteriorating due to the significant increase of subsidised imports already in the first quarter of 2018. Thus, should the Commission conclude that the domestic industry suffers material injury at the end of the current investigation, the collection of countervailing duties on registered imports may be deemed appropriate to preclude the recurrence of such injury.

4. PROCEDURE

(19) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

5. REGISTRATION