Commission Implementing Regulation (EU) 2016/675 of 29 April 2016 amending Implementing Regulation (EU) 2015/1519 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009

COMMISSION IMPLEMENTING REGULATION (EU) 2016/675

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 23(4) thereof,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 598/2009[(2)] the Council imposed a definitive countervailing duty on imports of biodiesel as defined in recital 10 below originating in the United States of America.

(2) By Implementing Regulation (EU) No 443/2011[(3)], following an anti-circumvention investigation, the Council extended the definitive countervailing duty on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not ('extended measures').

(3) By Implementing Regulation (EU) No 391/2014[(4)], following a partial interim review concerning the anti-subsidy measures on imports of biodiesel originating in the United States of America, as extended to imports consigned from Canada, whether declared as originating in Canada or not, the Council terminated the partial interim review without amending the measures in force as extended.

(4) By Implementing Regulation (EU) 2015/1519[(5)], following an expiry review pursuant to Article 18(2) of the basic Regulation, the European Commission ('the Commission') imposed definitive countervailing duty on imports of biodiesel originating in the United States of America ('measures in force').

B. REQUEST FOR A REVIEW

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/675. (See end of Document for details)*

(5) The Commission received a request for a partial interim review ('the review request') pursuant to Article 19 and Article 23(6) of the basic Regulation.

(6) The review request was lodged by DSM Nutritional Products Canada Inc. ('the applicant'), an exporting producer from Canada, and was limited in scope to the possibility of obtaining an exemption from the extended measures.

(7) In the review request the applicant claimed that it is a genuine producer of the product under review able to produce the entire quantity that it has shipped to the Union since the start of the investigation period of the anti-circumvention investigation mentioned in recital 2 leading to the imposition of the existing extended measures.

(8) Furthermore, the applicant alleged that it was not related to any exporting producers subject to the measures in force, and that it was not circumventing the measures in force.

C. INITIATION OF A PARTIAL INTERIM REVIEW

(9) The Commission determined that the review request contained sufficient *prima facie* evidence to justify the initiation of a partial interim review pursuant to Article 19 and Article 23(6) of the basic Regulation. The Commission thus initiated on 19 May 2015 an investigation by a notice published in the *Official Journal of the European Union*[6] ('the notice of initiation').

D. PRODUCT UNDER REVIEW

(10) The product under review is fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin ('the product under review', or 'biodiesel'), currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 92, ex 3826 00 10 and ex 3826 00 90 originating in the United States of America.

E. INVESTIGATION PERIOD

(11) The reporting period for this investigation covered the period from 1 April 2014 to 31 March 2015 ('reporting period'). Data was also collected from 1 April 2009 to the end of the reporting period.

F. INTERESTED PARTIES

(12) The Commission officially informed the applicant and the representatives of Canada about the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. Only the applicant came forward. No hearing was requested.

(13) The Commission received the questionnaire reply submitted by the applicant, which was verified on the spot at the applicant's premises in Canada.

G. FINDINGS OF THE INVESTIGATION

(14) The applicant was founded in 1997 as a manufacturer of Omega 3 nutritional supplements.

(15) The investigation established that the applicant is a genuine producer of biodiesel, which is resulting as a by-product from its manufacturing process of Omega 3 fish oil concentrates, its core business.

(16) The investigation also confirmed that the applicant is not related to any producer of biodiesel located in the United States of America subject to measures.

(17) The investigation furthermore confirmed that the biodiesel exported to the Union market was indeed produced by the applicant.

(18) Moreover, the investigation did not reveal any evidence that the applicant purchased biodiesel from the United States of America, nor that it transhipped US manufactured biodiesel into the Union.

(19) In view of the findings in recitals 14 to 18, the Commission established that the applicant is a genuine producer of the product under review, and that it therefore should be exempted from the extended measures.

(20) Interested parties were informed of the intention to grant the exemption to the applicant and were given the opportunity to comment. No comments which could alter the decision to terminate the review investigation were received.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Council Regulation (EC) No 1225/2009[7],

HAS ADOPTED THIS REGULATION:

Article 1

Article 2(1) of Implementing Regulation (EU) 2015/1519 is replaced by the following:

1. The definitive countervailing duty applicable to “all other companies” as set out in Article 1, paragraph 2, is extended to imports into the Union of fatty-acid mono- alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as “biodiesel”, in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro- treatment, of non-fossil origin, consigned from Canada, whether declared as originating in Canada or not, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 15 (TARIC code 2710 20 15 21), ex 2710 20 17 (TARIC code 2710 20 17 21), ex 3824 90 92 (TARIC code 3824 90 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 30, 3826