Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 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) 2015/1519

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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 18(1) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 598/2009[(2)], the Council imposed a definitive countervailing duty, ranging from EUR 211,2 to EUR 237 per tonne net, on imports 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, at that time falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 20), ex 1518 00 91 (TARIC code 1518 00 91 20), ex 1518 00 99 (TARIC code 1518 00 99 20), ex 2710 19 41 (TARIC code 2710 19 41 20), 3824 90 91, ex 3824 90 97 (TARIC code 3824 90 97 87), and originating in the United States of America ('USA' or 'the country concerned'). The countervailing duty imposed by this regulation is hereafter referred to as 'the existing measures'.

(2) By Implementing Regulation (EU) No 443/2011[(3)], following an anti-circumvention investigation, the Council extended the definitive anti-countervailing imposed by Regulation (EC) No 598/2009 to imports into the Union of biodiesel consigned from Canada, whether declared as originating in Canada or not, with the exception of those produced by the companies BIOX Corporation, Oakville and Rothsay Biodiesel, Guelph, Ontario, Canada. By the same Regulation the Council also extended the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of fatty-acid mono-

alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, originating in the United States of America.

1.2. **Measures in force in respect of other third countries**

(3) Outside the scope of this proceeding, anti-dumping measures on biodiesel are currently in force on exports from Argentina and Indonesia[(4)].

1.3. **Request for a review**

(4) Following the publication of a notice of impending expiry[(5)] of the countervailing measures in force on the imports of biodiesel originating in the United States of America, the European Commission ('the Commission') has received a request for review pursuant to Article 18 of the basic Regulation.

(5) The request was lodged on 9 April 2014 by the European Biodiesel Board ('the applicant') on behalf of Union producers representing more than 25 % of the total Union production of biodiesel. The request was based on the grounds that the expiry of the measures would be likely to result in recurrence of subsidisation and recurrence of injury to the Union industry.

1.4. **Initiation of an expiry review**

(6) Having determined, after consulting the Committee established by Article 15(1) of the Council Regulation (EC) No 1225/2009[(6)], that sufficient evidence existed to justify the initiation of an expiry review, the Commission announced, on 10 July 2014, by a notice published in the *Official Journal of the European Union* (Notice of Initiation)[(7)] the initiation of an expiry review under Article 18 of the basic Regulation. On the same day, the Commission initiated an expiry review of the anti-dumping measures in force on the imports of biodiesel originating in USA[(8)]. This is a parallel but distinct proceeding which is dealt with by means of a separate Regulation.

(7) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of the United States of America ('USG') that it had received a properly documented review request and invited the USG for consultations with the aim of clarifying the situation as regards the content of the review request and arriving at a mutually agreed solution. The USG accepted the offer for consultations and consultations were subsequently held on 3 July 2014. During the consultations, no mutually agreed solution could be reached. However, due note was taken of the comments submitted by the authorities of the USG.

1.5. **Review investigation period and period considered**

(8) The investigation of the likelihood of a continuation and recurrence of subsidy covered the period from 1 July 2013 to 30 June 2014 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a recurrence of injury covered the period from 1 January 2011 to 30 June 2014 ('the period considered').

1.6. **Interested parties**

(9) 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 the applicant, other known Union producers, the known exporting producers in the USA and the USA authorities, 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.

(10) 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.

1.7. **Sampling**

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

(a) Sampling of Union producers

(12) In the 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 and sales volumes whilst ensuring a geographical spread. This provisional sample consisted of seven Union producers located in seven different Member States which accounted for almost 30 % of Union production of biodiesel. The Commission invited interested parties to comment on the provisional sample.

(13) One company located in Italy requested to be included in the sample. However, this company only started its activities by the end of 2013 after having acquired a biodiesel plant from another Italian biodiesel producer, which was included in the provisional sample. In the absence of historical data necessary for assessing relevant trends during the period considered and the fact that another Italian company was already included in the provisional sample, it was decided not to include this company in the sample.

(14) The US National Biodiesel Board (‘NBB’) commented that the provisionally selected sample was different from the sample selected in the previous investigations concerning biodiesel and referred to two companies in particular with sizeable production and sales volumes which were not included in the provisional sample. However, the two companies identified by NBB were either related to another company with higher sales volumes already included in the sample or had lower sales volume than a provisionally selected company in the same Member State. Therefore, the inclusion of either of those two companies would not have changed the representativeness of the provisionally selected sample. The provisionally selected sample was therefore confirmed as a representative sample of the Union industry.

(15) Following final disclosure, the US Government claimed that a sample representing 30 % of the Union industry could not be considered representative of the Union biodiesel industry as a whole and that the microindicators should have been

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/1519. (See end of Document for details)*

analysed on a broader basis. The US Government refers to the WTO Appelate Body finding in the case *EC — Fasteners* in which a sample of 27 % was considered low in proportion to the total and would only constitute a major proportion in the case of fragmented industries.

(16) The Commission, contrary to the *Fasteners* investigation, defined for the purpose of this investigation, the Union industry as the entire industry and not only the sampled companies (recital (151) below). Furthermore, all macroindicators were assessed on the basis of the entire industry whilst only some microindicators were analysed at the level of the sampled companies. However, the overall analysis of the situation of the Union industry was based on an assessment of both micro-and macroindicators. In any event, the Union industry is considered to be a fragmented industry since it is composed of over 200 producers located across the Union of which most are small and medium enterprises. Therefore, the Commission concludes that the sample, representing 30 % of the Union industry, is representative and the claim is accordingly rejected.

(b) Sampling of importers

(17) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

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

(c) Sampling of exporting producers in the USA

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

(20) 27 producers in the USA replied to the Commission but only 9 provided export and/or and domestic sales data requested in Annex I to the Notice of Initiation for the purpose of sampling. None of them was exporting to the Union during the RIP. The Commission selected a sample of three exporting producers with the highest volume of domestic and export sales. In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the USA, were consulted on the selection of the sample. No comments were made.

(21) None of the sampled producers provided any questionnaire reply within the deadline. On 7 October 2014 the Commission informed the three sampled exporting producers about this lack of reply.

(22) On 10 October 2014, one sampled exporting producer informed the Commission that it had chosen no to respond to the questionnaire. The other two

sampled exporting producers requested various extensions to the deadline, which were granted, but no complete replies were submitted.

(23) On 10 November 2014 the Commission sent a letter informing the three sampled companies about the intention to apply Article 28 of the basic Regulation. The USA authorities were also informed about the intention of the Commission to apply Article 28 of the basic Regulation. The deadline for providing comments to the letter was 21 November 2014.

(24) By 21 November 2014, two of the sampled companies did not react at all and the other sampled company explained that the time-limit was not sufficient for them to submit their answer.

(25) The Commission therefore concluded that none of the sampled exporting producers in the USA cooperated in the expiry review investigation. As a consequence, the Commission decided to apply the provisions of Article 28 of the basic Regulation and, accordingly, that findings, affirmative or negative, may be made on the basis of the facts available.

1.8. **Questionnaire replies and verification visits**

(26) The Commission received questionnaire replies from the authorities of the USA, from the sampled Union producers and from four users/traders.

(27) The Commission sought and verified all the information deemed necessary for a determination of subsidisation, resulting injury and Union interest.

(28) Verification visits were carried out at the premises of the following authorities of the United States of America:

Federal authorities of the USA

— Department of Treasury (DOT)

— Department of Agriculture (USDA)

State authorities

— Florida State Authorities, Tallahassee

— Iowa State Authorities, Des Moines

— Kansas State Authorities, Topeka

— Kentucky State Authorities, Frankfort

(29) Verification visits were carried out at the premises of the following Union producers:

— Bio-Oils Huelva S.L., Huelva, Spain,

— Biopetrol Rotterdam BV, Rotterdam, the Netherlands,

— Diester industrie SAS, Rouen, France,

— Novaol S.R.L., Milan, Italy,

— Preol a.s., Lovosice, Czech Republic,

— Rafineria Trzebinia S.A., Trzebinia, Poland