Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 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, and extending 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 biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore

COUNCIL IMPLEMENTING REGULATION (EU) No 443/2011

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THE COUNCIL OF THE EUROPEAN UNION,

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,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) The Commission, by Regulation (EC) No 194/2009[(2)] imposed a provisional countervailing duty on imports of biodiesel originating in the United States of America('USA').

(2) By Regulation (EC) No 598/2009[(3)] (the 'definitive Regulation'), the Council imposed a definitive countervailing duty ranging from EUR 211,2 to EUR 237 per tonne on imports of biodiesel, as defined in Article 1(1) of the said Regulation ('the product concerned') originating in the USA ('the existing measures'). The investigation leading to the adoption of the definitive Regulation is hereafter referred to as 'the original investigation'.

(3) It should also be noted that by Regulation (EC) No 599/2009[4], the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198 per tonne on imports of the product concerned.

1.2. **Request**

(4) On 30 June 2010, the Commission received a request pursuant to Article 23(4) of the basic Regulation to investigate the possible circumvention of the countervailing measures imposed on imports of the product concerned. The request was submitted by the European Biodiesel Board ('EBB') on behalf of the Union producers of biodiesel.

(5) The request alleged that the countervailing measures on imports of the product concerned were being circumvented by means of transhipment via Canada and Singapore and by exports of biodiesel in a blend containing by weight 20 % or less of biodiesel.

(6) The request alleged that a significant change in pattern of trade involving exports from the USA, Canada and Singapore has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for this change. This change in pattern of trade stemmed allegedly from the transhipment of the product concerned via Canada and Singapore.

(7) The request further alleged that following the imposition of the measures, exports of biodiesel in blends containing 20 % or less of biodiesel from the USA had begun to arrive in the Union, allegedly taking advantage of the biodiesel content threshold set in the description of the product concerned.

(8) Furthermore, the request alleged that the remedial effects of the existing countervailing measures on the product concerned were being undermined both in terms of quantity and price. It was alleged that significant volumes of imports of biodiesel in pure form or in a blend containing by weight more than 20 % of biodiesel from Canada and Singapore and of biodiesel in blends containing 20 % or less of biodiesel, appeared to have replaced imports of the product concerned. In addition, there was sufficient evidence that this increased volume of imports were made at prices well below the non-injurious price established in the investigation that led to the existing measures.

(9) Finally, the request alleged that the prices of the product concerned continue to be subsidised as previously established.

1.3. **Initiation**

(10) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 23 of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 721/2010[5] (the 'initiation Regulation'). Pursuant to Article 24(5) of the basic Regulation, the Commission, by the initiation Regulation, also directed the customs authorities to register imports consigned from Canada and Singapore as well as imports

originating in the USA 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.

(11) The Commission also initiated a parallel investigation by Regulation (EU) No 720/2010[6] concerning the possible circumvention of anti-dumping measures on imports of biodiesel originating in the USA by imports of biodiesel consigned from Canada and Singapore and by imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the USA.

1.4. **Investigation**

(12) The Commission officially advised the authorities of the USA, Canada and Singapore. Questionnaires were sent to known producers/exporters in the USA, Canada and Singapore. 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 initiation Regulation.

(13) The following companies submitted replies to the questionnaires and verification visits were subsequently carried out at their premises:

Producers/exporters in Canada:

— BIOX Corporation

— Rothsay Biodiesel

Traders in Singapore:

— Trafigura Pte Ltd

— Wilmar Trading Pte Ltd

Producers/exporters in the USA:

— Archer Daniels Midland Company

— BP Products North America Inc

— Louis Dreyfus Corporation

Related importers:

— BP Oil International Ltd

— Cargill BV

(14) Moreover, visits were made to the relevant competent authorities of the Government of Canada and the Government of Singapore.

1.5. **Investigation period**

(15) The investigation period covered the period from 1 April 2009 to 30 June 2010 (the 'IP'). Data was collected for the period from 2008 up to the end of the IP to investigate the alleged change in the pattern of trade.

2. PRODUCT FORMING THE OBJECT OF THE CIRCUMVENTION INVESTIGATION

(16) The product concerned by the possible circumvention, i.e. the product at issue in the original investigation, 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, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 41, 3824 90 91, ex 3824 90 97, and originating in the USA.

(17) The product forming the object of the circumvention investigation is twofold. Firstly, regarding the allegations of transhipment through Canada and Singapore, it is identical to the product at issue in the original investigation, as described in the previous paragraph. Regarding shipments directly from the USA, the product under investigation is 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 USA.

3. IMPORTS OF BIODIESEL INTO THE UNION VS. EXPORTS FROM THE USA

(18) Following the imposition of provisional countervailing measures in March 2009, imports of the product concerned have practically ceased. The below table summarises the situation:

Imports of biodiesel and certain biodiesel blends into the European Union

under CN code 3824 90 91 (in tonnes)

	2008	share	2009	share	IP	share
USA	1 487 790	83,62 %	381 227	22,29 %	24	0,0 %
Canada	1 725	0,1 %	140 043	8,19 %	197 772	9,28 %
Singapore	179	0,01 %	20 486	1,2 %	32 078	1,5 %

Source: Eurostat.

(19) The above Eurostat data cover all biodiesel containing 96,5 % or more of esters.

(20) In comparison, the USA report exports of biodiesel and biodiesel blends under code HTS 3824 90 40 00 (mixtures of fatty substances, animal or vegetable origin) as follows:

US exports of biodiesel and biodiesel blends

under code HTS 3824 90 40 00 (in tonnes)

	2008	2009	IP
European Union	2 241 473	335 577	358 291

Source: US Department of Commerce.

US exports of biodiesel and biodiesel blends			
under code HTS 3824 90 40 00 (in tonnes)			
Canada	967	128 233	161 841
Singapore	311	42 056	27 415
	2 242 751	505 866	547 547

Source: US Department of Commerce.

(21) Comparing the two above tables leads to the conclusion that the 358 291 tonnes exported to the Union during the IP are blends with a biodiesel content of 96,5 % and below.

4. CANADA

4.1. General considerations

(22) There was a high level of cooperation by producers/exporters in Canada. Two producers representing approximately 90 % of Canadian production of biodiesel submitted a questionnaire reply and fully cooperated with the investigation. Moreover, the Canadian Renewable Fuels Association and relevant authorities of the Government of Canada cooperated with the investigation.

(23) In accordance with Article 23(3) of the basic Regulation, the assessment of the existence of circumvention should be made by analysing successively whether there was a change in the pattern of trade between USA, Canada and the Union, if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty, if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product, and that the imported like product still benefits from the subsidy.

4.2. Change in patterns of trade

4.2.1. *Imports into the Union*

(24) Imports of biodiesel from the USA dropped from 1 487 790 tonnes in 2008, to 381 227 tonnes in 2009 and to close to zero during the IP.

(25) On the other hand, according to Eurostat data total imports of biodiesel from Canada to the Union increased significantly between 2008 and the IP from 1 725 tonnes in 2008 to 140 043 tonnes in 2009 and 197 772 tonnes during the IP.

4.2.2. *US exports of biodiesel to Canada*

(26) There are no customs duties applicable for sales of biodiesel between the USA and Canada or other kinds of imports restrictions.