Commission Regulation (EU) No 721/2010 of 11 August 2010 initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not and by imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and making such imports subject to registration

COMMISSION REGULATION (EU) No 721/2010

of 11 August 2010

initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not and by imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and making such imports subject to registration

THE EUROPEAN COMMISSION,

Having regard to the Treaty of 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 Articles 23(4), 24(3) and 24(5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. **REQUEST**

The European Commission ('the Commission') has 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 biodiesel originating in the United States of America.

The request was lodged on 30 June 2010 by the European Biodiesel Board (EBB) on behalf of the Union producers of biodiesel.

B. **PRODUCT**

The product concerned by the possible circumvention 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 United States of America ('the product concerned').

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 721/2010. (See end of Document for details)*

The product under 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, consigned from Canada and Singapore and 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 ('the product under investigation'), currently falling within the same CN codes as the product concerned with the exception of CN code 3824 90 91 for which the investigation is limited to products consigned from Canada and Singapore.

C. **EXISTING MEASURES**

The measures currently in force and possibly being circumvented are countervailing measures imposed by Council Regulation (EC) No 598/2009[(2)].

D. **GROUNDS**

The request contains sufficient *prima facie* evidence that the countervailing measures on imports of biodiesel originating in the United States of America are being circumvented by means of the transhipment of biodiesel via Canada and Singapore and by exports of biodiesel in a blend containing by weight 20 % or less of biodiesel.

The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the United States of America, Canada and Singapore to the Union 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 such a change.

This change in the pattern of trade appears to stem from the transhipment of biodiesel originating in the United States of America via Canada and Singapore.

It is also submitted that following the imposition of the measures, exports of biodiesel in blends containing 20 % or less of biodiesel from the United States of America begun to arrive into the Union, allegedly taking advantage of the biodiesel content threshold set in the description of the product concerned.

Furthermore, the request contains sufficient prima facie evidence that the remedial effects of the existing countervailing measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of biodiesel from Canada and Singapore and of biodiesel in blends containing 20 % or less of biodiesel, appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increased volume of imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures.

Finally, the request contains sufficient prima facie evidence that the prices of the product under investigation continue to be subsidised as previously established.

Should circumvention practices covered by Article 23 of the basic Regulation, other than the practices described above, be identified in the course of the investigation, the investigation may also cover these practices.

E. **PROCEDURE**

In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23 of the basic Regulation and to make imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not, as well as imports from the United States of America 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, subject to registration, in accordance with Article 24(5) of the basic Regulation.

(a) **Questionnaires**

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Canada and Singapore, to the exporters/producers and to the associations of exporters/producers in the United States of America, to the known importers and to the known associations of importers in the Union and to the authorities of the United States of America, Canada and Singapore. Information, as appropriate, may also be sought from the Union industry.

In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation in order to find out whether they are listed in the request and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

The authorities of the United States of America and Canada and Singapore will be notified of the initiation of the investigation.

(b) **Collection of information and holding of hearings**

All interested parties are hereby 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.

(c) **Exemption of registration of imports or measures**

In accordance with Article 23(5) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 23(5) of the basic Regulation, to producers of the product under investigation that can show that they are not related[(3)] to any producer

subject to the measures[4] and that are found not to be engaged in circumvention practices as defined in Article 23(3) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

F. **REGISTRATION**

Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Canada and Singapore as well as imports from the United States of America 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.

In order that the registration is sufficiently effective in view of an eventual retroactive levying of a countervailing duty, the declarant should indicate on the customs declaration the proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

G. **TIME LIMITS**

In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— producers in Canada Singapore and the United States of America may request exemption from registration of imports or measures,

— interested parties may make a written request to be heard by the Commission.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. **NON-COOPERATION**

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. **SCHEDULE OF THE INVESTIGATION**

The investigation will be concluded, according to Article 23(4) of the basic Regulation, within nine months of the date of the publication of this regulation in the *Official Journal of the European Union*.