

2. the producer has made a substantial investment in the plant: and

3. the plant is a permanent fixture in Texas.

(c) *Practical implementation*

(137) The scheme established that producer that paid a fee of USD 0,032 per gallon of biodiesel produced in a registered plant was entitled to receive USD 0,20 for each gallon of biodiesel produced in each registered plant until the 10th anniversary of the date production from the plant begins.

(138) A registered plant was required to submit monthly production reports and a quarterly report certified by a Certified Public Accountant. When the quarterly report was submitted, the plant would also pay a fee of USD 0,032 per gallon. The amount of this paid fee would be multiplied 5,25 times such that a USD 0,20 per gallon incentive was then paid to the plant. The production limit to receive the incentive was the first 18 million gallons annually per plant.

(139) The scheme became effective in September 2003 but the first payments under this scheme were not made until June 2006 because no funds were appropriated until fiscal year September 2005 to August 2006. The scheme has not been operational since 31 August 2007, as the Texan Legislature ceased funding the scheme as of the 2008-09 appropriations biennium (September 2007 to August 2009). In legal terms, the scheme still exists in Texas. Moreover, it was established that one of the companies concerned enjoyed benefits under this scheme during the period of investigation.

(d) *Conclusion*

(140) This scheme is considered to a subsidy in the sense of Article 2(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the government of the state of Texas in the form of direct grants. The grants confer a benefit on the companies receiving them in accordance with Article 2(2) of the basic Regulation. The scheme is limited, *inter alia*, to biodiesel producers and is therefore considered to be specific under Article 3(2)(a) of the basic Regulation and therefore countervailable.

(e) *Calculation of the subsidy amount*

(141) One company availed of this scheme in the IP. The subsidy amount was calculated on the basis of the amount of payments received during the investigation period. Fees necessarily incurred to obtain the subsidy were deducted from the payments received to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(142) The amount of subsidy has then been allocated over the total sales of biodiesel made by the company concerned during the IP as the appropriate denominator.

(143) The company concerned obtained subsidies from this scheme during the investigation period of 0,3 %.

3.12. Washington State biofuels production tax exemption

(144) The state of Washington provides tax reductions from the Business and Occupation tax ('B&O tax') and tax exemption from the property tax and leasehold excise tax.

(145) The state of Washington does not have a system of corporate income tax. Rather, businesses are liable to a Business and Occupation tax ('B&O tax') which is imposed on manufacturing activities. The normal tax rate imposed on manufacturing activities is 0,484 % unless otherwise specified in Washington state legislation.

(146) In regard to the property tax, the applicable rate is determined by many overlapping jurisdictions and varies among local taxing jurisdictions within the State of Washington. However, the state-wide average is approximately 1,2 % of fair market value.

(147) The leasehold excise tax is a tax imposed in lieu of property tax when exempt property, such as public port property, is used by a non-exempt entity, such as a for profit business. The rate is 12,84 % of the contract rental price.

(a) *Legal basis*

(148) Under the Revised Code of Washington (RCW) Chapter 82.04.260(1)(e), the B&O tax rate for manufacturers of pure biofuels, including biodiesel, is reduced from 0,484 % to 0,138 %. This reduced rate is applicable until 1 July 2009.

(149) In regard to the property tax and leasehold excise tax exemptions, RCW Chapter 84.36.635 and RCW Chapter 82.29A.135 provide that qualifying real and personal property is exempt from property tax and leasehold excise tax.

(b) *Eligibility*

(150) All three of the above mentioned tax reductions/exemptions apply to biofuel manufacturers. The reductions/exemptions are available state-wide, with no limitations other than the eligibility requirement.

(151) In regard to the eligibility for the B&O tax reduction, as stated above, manufacturers of biodiesel are eligible.

(152) In regard to the property tax and leasehold excise tax exemptions, as stated above, qualifying real and personal property is exempt from property tax and leasehold excise tax. Qualifying real and personal property must be used primarily for manufacturing pure biofuels. Qualifying property includes buildings, machinery and equipment, other personal property and land associated with the manufacture of biofuels, but not the land used to grow crops. The buildings and equipment must be new and cannot have existed before July of 2003.

(c) *Practical implementation*

(153) To avail of the reduced rate of B&O tax that is applicable to biodiesel manufacturers, an eligible company simply reports the value of sales of such products on the relevant tax return.

(154) Application for the property tax and leasehold excise tax exemptions must be made by 1st November of each year. Application for property tax exemption is made through the local county assessor. Application for leasehold excise tax exemption is made through the Department of Revenue.

(d) *Conclusions*

(155) This scheme is considered to be a subsidy in the sense of Article 2(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the government of the state of Washington as government revenue that is otherwise due (B&O tax) is foregone or not collected. The reduced tax liability of a company using this scheme confers a benefit. The reduced B&O tax rate that is applicable to biofuels manufacturers is specific as it is limited to manufacturers of biofuels, including biodiesel, and certain other specified activities and is therefore considered to be countervailable.

(156) None of the sampled companies availed of benefits under the property tax exemption. In these circumstances, no conclusions are drawn on this tax exemption. One company availed of benefits under the leasehold excise tax exemption but the amount of benefit was less than 0,1 % and hence considered to be negligible. In these circumstances, no conclusions are drawn on this tax exemption.

(e) *Calculation of the subsidy amount*

(157) One company availed of benefits under the reduced B&O tax scheme during the IP. The subsidy amount was calculated by applying the reduced rate of B&O tax to the sales turnover of biodiesel produced by the company in the IP. The amount of subsidy, when expressed as a percentage of the total sales volume of biodiesel in the IP was 0,7 %.

3.13. Amount of countervailable subsidies

(158) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated companies ranges between 29,1 % and 41,1 %.

(%)

SCHEME COMPANY	Biodiesel Mixture Credit	Small Agri- biodiesel Producer Income tax credit	Missouri qualified biodiesel producer incentive fund	Texas fuel ethanol and biodiesel production incentive program	Washington State biofuels production tax exemption	Total
Archer Daniels Midland Company	31,3		3,8			35,1
Cargill Inc.	34,1	0,4				34,5
Green Earth Fuels of Houston LLC	38,7			0,3		39,0
Imperium Renewables Inc.	28,4				0,7	29,1
Peter Cremer North America LP	41,0					41,0
Vinmar Overseas Limited	41,1					41,1
World Energy Alternatives LLC	37,6					37,6