

- (92) The total amount of a federal participation (loan guarantee, plus other federal funding) must not exceed 80 per cent of the total eligible project costs. The borrower and other principals involved in the project must make a significant cash equity contribution.

4.2.5.3. Practical implementation

- (93) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³³⁾ (since there was no cooperation as in indicated in recital (27) above), the Commission concluded that the US exporting producers benefited from it by applying facts available in accordance with Article 28 of the basic Regulation.

4.2.5.4. Conclusion

- (94) The Commission considered that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as it provides a financial contribution by the Government of the USA in the form of a fiscal incentive. The incentive confers a benefit on the companies receiving them.
- (95) The scheme is limited to companies that are involved in the advanced biofuel industry and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

4.3. Subsidisation – State Schemes

4.3.1. *The Iowa Biodiesel Producer Tax Refund*

4.3.1.1. Legal basis

- (96) The legal basis of this scheme operated by the Iowa Department of Revenue is Section 423.4(9) of the Iowa Code.
- (97) The scheme was scheduled to expire on 1 January 2015 but was first extended until 1 January 2018 by the 85th General Assembly of the State of Iowa in 2014. In 2016, the 86th General Assembly of the State of Iowa through an act adopted on 24 May 2016 (Chapter 1106) extended this scheme for another nine-year period, i.e. until 1 January 2025.

4.3.1.2. Eligibility

- (98) The producer must be a manufacturer of biodiesel, registered by the United States Environmental Protection Agency, pursuant to 40 C.F.R. §79.4. The biodiesel must be for use in biodiesel blended fuel in accordance with Iowa Code Section 214A.2. The biodiesel must be produced in Iowa.

4.3.1.3. Practical implementation

- (99) Eligible biodiesel producers need to introduce a refund claim providing data on the number of biodiesel gallons produced during the quarter. The Department of Revenue reviews the refund claim and, if approved, refunds each eligible biodiesel producer.
- (100) The refund claims are filed in April, July, October and January of each year, and the refund checks are issued in May, August, November and February of each year.
- (101) The programme provides a refund of USD 0,02 per gallon of biodiesel produced in Iowa. The refund is limited to the first 25 million gallons produced at each facility.
- (102) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³⁴⁾ (since there was no cooperation as in indicated in recital (27) above), the Commission concluded that the US exporting producers benefited from it by applying facts available in accordance with Article 28 of the basic Regulation.

⁽³³⁾ See Section 3.2.2 of the request for review.

⁽³⁴⁾ See Section 3.1.2.1 of the request for review.

4.3.1.4. Conclusion

- (103) The Commission considered that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the State of Iowa in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.
- (104) The scheme is limited to companies that produce biodiesel and other types of fuel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

4.3.2. *The Kentucky Biodiesel Production Tax Credit*

4.3.2.1. Legal basis

- (105) The legal basis of this scheme operated by the Kentucky Department of Revenue is the Kentucky Revised Statutes (KRS) under Sections 141.422 to 141.425.
- (106) The scheme was created by the 2005 Kentucky Acts, Chapter 168, Sec. 137, and became effective on 18 March 2005. It has been amended in 2006 and 2007. It is currently governed by the 2019 version of the KRS, as mentioned in the previous recital.

4.3.2.2. Eligibility

- (107) Any biodiesel producer, biodiesel blender, or renewable diesel producer physically located in Kentucky is entitled to the production tax credit.

4.3.2.3. Practical implementation

- (108) An eligible applicant must submit to the Department of Revenue a tax credit claim for biodiesel gallons produced or blended (or for the renewable diesel produced) in Kentucky by the 15th day of the first month following the close of the preceding calendar year.
- (109) An applicant claiming the tax credit must attach the credit certificate issued by the department to its tax return on which the tax credit is claimed ⁽³⁵⁾.
- (110) The amount of the tax credit is one dollar (USD 1) per biodiesel gallon produced by a biodiesel producer, or one dollar (USD 1) per gallon of biodiesel used in the blending process by a biodiesel blender, and one dollar (USD 1) per gallon of renewable diesel (that is diesel from biomass) produced by a renewable diesel producer, unless the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual cap of USD 10 million.
- (111) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³⁶⁾ (since there was no cooperation as indicated in recital (27) above), the Commission concluded that the US exporting producers benefited from it by applying facts available in accordance with Article 28 of the basic Regulation.

4.3.2.4. Conclusion

- (112) The Commission found that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the State of Kentucky in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.
- (113) The scheme is limited to companies that produce biodiesel and other types of fuel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

⁽³⁵⁾ <https://revenue.ky.gov/Business/Pages/Biodiesel-Tax-Credit.aspx>

⁽³⁶⁾ See Section 3.1.2.2 of the request for review.