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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 598/2009

of 7 July 2009

**imposing a definitive countervailing duty and collecting definitively the provisional duty imposed
on imports of biodiesel originating in the United States of America**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Article 15 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

impose provisional countervailing measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing measures on imports of biodiesel originating in the USA and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

1. PROCEDURE

1.1. Provisional measures

- (1) The Commission, by Regulation (EC) No 194/2009 ⁽²⁾ (the 'provisional Regulation') imposed a provisional countervailing duty on imports of biodiesel originating in the United States of America ('USA' or 'country concerned').
- (2) In the parallel anti-dumping proceeding, the Commission by Regulation (EC) No 193/2009 ⁽³⁾ imposed a provisional anti-dumping duty on imports of biodiesel originating in the United States of America.

1.2. Subsequent procedure

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to

(5) The US Government (USG) and other interested parties expressed their disappointment with the decision to grant only sixteen days to provide comments on the provisional disclosure and also with the decision to decline the requests of certain parties for a meaningful extension of time to file those comments.

(6) Article 30(1) of the basic Regulation provides that interested parties may be provided with the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. In this regard, it is the Commission's practice to provide disclosure to all interested parties to a proceeding upon publication in the *Official Journal of the European Union* of a regulation imposing provisional measures and to provide a period of time within which parties may provide comments thereon. This practice was followed

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ L 67, 12.3.2009, p. 50.

⁽³⁾ OJ L 67, 12.3.2009, p. 22.

in this proceeding. In regard to the time period within which parties were required to provide comments, the basic Regulation does not specify what period should be allowed. In this proceeding, it was considered that a period of sixteen days (subsequently extended to seventeen days) be granted given the complexity of the proceeding and the need to respect the requirement in Article 11(9) of the basic Regulation that the investigation be concluded within thirteen months of initiation.

- (7) In regard to the rate of duty established for US companies that did not make themselves known and cooperate in the investigation, the provisional duty rate was set at the level of the lower of the highest subsidisation margin or highest injury margin found for the sampled cooperating exporting producers. The rate so established was as set out ('all other companies' rate of EUR 237,0 per tonne) in Article 1(2) of the provisional Regulation. The USG considers that this rate of duty is a punitive rate improperly calculated on the basis of the facts available. The USG considers that, in order to rely on facts available under Article 28 of the basic Regulation, it must first be determined that an interested party has refused or failed to provide the 'necessary information' ⁽¹⁾. The USG rather considers that the weighted average rate calculated for the non-sampled cooperating companies should be applied instead.
- (8) In reply to this it should be noted that, at initiation stage, the Commission sent the sampling form, complaint and the Notice of initiation to the companies listed in the complaint (more than 150 companies). A copy of the sampling form was also attached to the Note Verbale sent to the Mission of the United States of America to the European Communities at initiation and they were invited to send it to exporters/producers in the United States of America. Moreover, the National Biodiesel Board, which has been an interested party from the outset of this proceeding, represents a great number of companies in the biodiesel industry in the United States of America.
- (9) The Notice of Initiation as well as the cover letter attached to the sampling form drew the attention of the consequences of non-cooperation. As mentioned in recital (8) of the provisional Regulation, more than 50 companies identified themselves in the context of the sampling exercise and provided the requested information within the 15 day period. These companies accounted for more than 80 % of the total imports of biodiesel from the United States of America to the Community.

⁽¹⁾ Article 28(1) of the basic Regulation states: 'In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. [...]'.
⁽²⁾ Unlike those companies which received a sampling form but did not return it.

- (10) Subsequent to the imposition of provisional measures, the authorities of the United States of America were asked to provide additional information. In particular, the authorities were asked to invite any additional exporters/producers of biodiesel in the United States of America beyond those listed in Article 1 and the Annex to the provisional Regulation, who were not known at the time of the initiation and did not previously refuse to cooperate ⁽²⁾, to make themselves known.
- (11) The authorities of the United States of America provided a list containing the names of more than 100 additional companies (producers/exporters) in the United States of America. It was examined whether any of the companies had been invited to cooperate at the stage of initiation of the proceeding. The investigation revealed that a significant number of the companies on the list had already been invited to cooperate during the sampling exercise but had chosen not to do so at that time. In other words, these companies were aware of the consequences of non-cooperation in accordance with Article 28 of the basic Regulation.
- (12) However, as regards those companies (more than 40) on the list who were unknown to the Commission at the time of the initiation of this proceeding, it was noted that the request to the US authorities to provide details of these companies was made after the imposition of provisional measures. It was therefore decided to add these companies to the Annex of this Regulation and apply the same duty rate to these companies as to those who expressly cooperated but were not chosen in the sample. These companies received disclosure of the essential facts and considerations on the basis of which it was intended to impose definitive measures and were invited to comment on the fact that it was proposed to add their names to the Annex of this Regulation.
- (13) Following final disclosure, the USG welcomed the proposal to apply the weighted average duty to additional companies. However, the USG considered that no explanation had been provided as to why other companies are made subject to the 'all other companies' rate. In this regard it is noted that for the companies that were invited to co-operate during the sampling exercise, explanations have already been given above. Regarding possible US exporters/producers that were not individually notified of the investigation nor mentioned in the list referred to in recital (11), it is noted first of all that extensive efforts were made upon initiation of the proceeding to contact companies in the USA that might be concerned by this proceeding (see recitals (8) and (10)).

above). Furthermore, additional efforts were made subsequent to the imposition of provisional measures as mentioned in recital (10) above to identify other companies which resulted in the addition of more than 40 companies to the list of those to whom the weighted average duty would apply. It is considered that these extensive efforts have given every opportunity to biodiesel companies in the USA to make themselves known. In this regard, it is noted that the relevant industry association has been involved in the proceeding since its initiation. Consequently, it is considered that the 'all other companies' rate of duty should be applied to companies that did not make themselves known.

- (14) One company that submitted a reply to the sampling form and was consequently listed in the Annex to the Provisional Regulation requested that its parent company be added to the list of companies in the Annex. This company also requested that the city location of the two companies be changed in the Annex to correctly reflect the address on the invoices of the companies.
- (15) Having examined this company's request, it was considered that the parent company should also be listed in the Annex to the current Regulation as it was mentioned in the company's reply to the sampling form as the only related company involved in the biodiesel business. The city location for both companies is also being revised.
- (16) Two cooperating companies requested that their names be removed from the Annex as they claimed not to be exporting producers. The companies' names have been removed accordingly.
- (17) It is recalled that the investigation of subsidisation and injury covered the period from 1 April 2007 to 31 March 2008 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from January 2004 to the end of the IP ('period considered').

1.3. Sampling of Community producers and exporting producers in the USA

- (18) In the absence of any comments concerning the sampling of exporting producers in the USA the provisional findings in recitals (6) to (10) of the provisional Regulation are hereby confirmed.
- (19) Certain parties commented on the representativity of the sample of Community producers. These comments are addressed in recitals (77) to (81) below.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (20) It is recalled that in the notice of initiation, the product allegedly being subsidised was defined as fatty-acid monoalkyl esters and/or paraffinic gasoils from synthesis and/or hydro-treatment, of non-fossil origin (commonly known as 'biodiesel'), whether in pure form or in a blend.
- (21) The complaint contained *prima facie* evidence that biodiesel and all blends, of biodiesel with mineral diesel, produced and subsidized in the USA and exported to the Community had affected the economic situation of the biodiesel producers in the Community. Consistent with the characteristics of the relevant US biodiesel producers and domestic market, the definition of the product concerned intended to cover biodiesel also when incorporated into the biodiesel blends. It was however considered that the definition of the product concerned as mentioned in the notice of initiation and in recital (20) above, could give rise to concerns as to what producers and what product types were intended to be covered by the investigation and those that were not.
- (22) Similarly, for the investigation of subsidization and injury, in particular for establishing the subsidy margins and injury elimination levels it was necessary to clearly identify the products concerned by the investigation.
- (23) In line with the characteristics of the US market, the product concerned was provisionally defined as fatty acid monoalkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', whether in pure form or in blends, which are above B20. Hence the product concerned covered pure biodiesel (B100) and all blends which contain more than 20 % biodiesel ('the product concerned'). This threshold was considered to be appropriate to allow a clear distinction between the various types of blends which are intended to be further blended and those intended for direct consumption on the US market.

- (24) The investigation showed that all types of biodiesel and the biodiesel in the blends covered by this investigation, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception of that various parties have of it.

- (25) Claims were received from interested parties on the definition of the product concerned and the like product whereby they contested both the definition of the product concerned and the like product simultaneously with the same arguments without making any distinction between the concept of product concerned and like product in the context of the proceeding.
- (26) It is recalled that whilst the concept of the product concerned is governed by the provisions of Article 1(1) to 1(4) of the basic Regulation, the interpretation of the term 'like product' is mentioned in Article 1(5) of the basic Regulation. Hence, the claims will be addressed separately below.
- (27) One party questioned to what extent blends with low proportion of biodiesel (e.g. B21) should still deem to qualify as biodiesel on par with pure biodiesel (B100) or on similar blends that consist primarily of biodiesel with lower amount of mineral diesel (e.g. B99). They claimed that B100 and B99 basically underwent the investigation and that all the calculations of dumping and injury were made on the basis of these two product types. In their view establishing a threshold just above B20, namely the low-level blend sold directly to consumers in the US leads to an artificial definition of the product concerned.
- (28) The same party also questioned whether a blend with 20 % biodiesel still qualifies to be a biodiesel fuel rather than mineral diesel which is not included in the definition of the product concerned. This party understands that the EU supports the view that a new customs heading should be created ⁽¹⁾ for biodiesel in the customs Harmonised System (HS). In its view the Commission broadened the definition of the product in the present proceeding and expanded the product types affected by the imposition of the measures.
- (29) In addition, the party considers that at the time of the investigation no specific threshold existed to determine what is biodiesel for the classification in CN code 3824 90 91, the specific code created since 1 January 2008 for biodiesel by the EU. They questioned whether under the rule 3(b) of the general rules for the interpretation of the combined nomenclature ⁽²⁾ a blend containing less than 50 % biodiesel could still qualify as biodiesel. They further mentioned that the examples of blends mentioned in the Commission questionnaire were of high biodiesel contents and thus implied that the product concerned is only biodiesel and blends containing very high levels of biodiesel.
- (30) The party also claimed that the EU cannot change the definition of the product concerned whilst maintaining a different like product. It referred to Article 15.1 of the WTO ASCM (Agreement on Subsidies and Countervailing Measures). According to them the subsidy and the injury findings are made based on B100 and B99 and the US Harmonised Tariff System (HTS) codes ⁽³⁾ which were used in the investigation do not appear to include products with biodiesel volume as low as 20 %. They also referred to the provisional disclosure to the sampled US biodiesel producers that demonstrates that the sampled US producers sold blends exclusively made of various types of biodiesel. Hence the product concerned should be limited to the products that contain 100 % of biodiesel (B100), even if composed of biodiesel made of different feedstock, or to blends containing 99 % of biodiesel (B99).
- (31) The party referred to a recent Court Judgement ⁽⁴⁾ concerning imports of ammonium nitrate and concluded that the rationale of that judgment also applies to the current proceeding and that biodiesel that is not part of blends in very high content cannot be subject to the investigation and to measures as it is not the like product for which dumping and injury findings were drawn, namely products that contain only biodiesel (B100) or blends with 99 % of biodiesel (B99).
- (32) The parties did not bring any evidence or a legal reference which would show that the product concerned was not correctly defined in the present investigation. The provisions in Article 1(1) to 1(4) of the basic Regulation which provide guidance as to the definition of the product concerned. Article 1(1) states that: 'A countervailing duty may be imposed for the purpose of offsetting any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.'
- (33) As mentioned in recital (21) above, the complaint contained *prima facie* evidence that biodiesel and all blends, of biodiesel with mineral diesel, produced in the USA and exported at subsidised price to the Community had affected the economic situation of the biodiesel producers in the Community.
- (34) The parties did not bring any evidence showing that the threshold fixed in the provisional Regulation to set the dividing line between product concerned and product non concerned was artificial. As mentioned in recitals (26) and (28) of the provisional Regulation, the investigation showed that B20, and potentially lower level blends, were actually sold directly to consumers in the US. The investigation also showed that the market for blending and the market for consumer products

⁽¹⁾ Heading number 3826 00 to cover 'biodiesel and mixtures thereof, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals'.

⁽²⁾ Mixtures composite goods consisting of different materials or made of different components and goods put in sets for retail sales, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.'

⁽³⁾ HTS codes 38 24 90 40 00 and 38 24 90 40 20.

⁽⁴⁾ Case T-348/05: JSC Kirovo-Chepetsky Khimichesky Kombinat v Council, 10 September 2008, paras 61-63.

were different markets with different customers: one market where biodiesel and biodiesel blends are destined to further blending by traders and blenders and one market where the blends are destined to the distribution network and thus to consumers. Defining the threshold for the product concerned above B20 allowed to draw a clear dividing line and avoided confusion between the products, the markets and the various parties in the USA. The claim was thus rejected.

- (35) In all anti-subsidy investigations it is common that individual companies investigated do not produce and sell all the product types included in the definition of the product concerned. Some companies may produce a very limited range of product types while other may produce a larger range. This, however, does not affect the definition of the product concerned. It is therefore considered that the claim that the product concerned should only cover the product types that were exported by the US producers and used for the subsidisation and the injury calculations is unfounded.
- (36) As mentioned in the provisional Regulation and in recital (20) above, the investigation primarily focused on biodiesel, whether in pure form or when incorporated in blends. The countervailing measures will apply to the relevant blends exported to the Community market. Hence, it is considered that the question whether a blend with 20 % biodiesel still qualifies for a biodiesel fuel rather than mineral diesel which is not included in the definition of the product concerned is not relevant.
- (37) It should be clarified that the subsidy and the injury findings of each company investigated were exclusively based on the relevant product types which were produced and sold by the relevant company during the IP. Claiming that the definition of the product concerned including blends above B20 would affect unduly US producers is not founded and cannot lead to the conclusion that the product concerned should be limited to the products that contain 100 % of biodiesel (B100) even if composed of biodiesel of different feedstock or a blend composed of 99 % of biodiesel (B99). Including blends above B20 in the definition of the product concerned had no impact whatsoever on the findings made for companies investigated which are not producing and exporting this product type.
- (38) The allegation of the party according to which the rationale of a Court Judgment⁽¹⁾ also applies to the current proceeding and that biodiesel that is not part of blends in very high content cannot be subject to the scope of the investigation is also not founded. In fact, for each company investigated, any injury and subsidy margins will exactly match the product concerned and the like product for which subsidy and injury findings were established, namely the relevant products types that contain biodiesel that were sold domestically and

exported to the Community by that company. Also, the judgment which is invoked by the operator concerned a review of existing anti-dumping measures resulting in their extension to other products than the product concerned, which is not the case in the current investigation.

- (39) Although it is considered that the examples provided in a questionnaire intended to collect data for the purpose of an investigation cannot be used to make assumptions as to the conclusion of the investigation, it is noteworthy that the Commission cannot know in advance, namely before its on-spot investigation takes place, which types of products will be produced and sold in the domestic market and for export by the companies concerned at the moment of the drafting of the questionnaire. According to Article 1 of the basic Regulation, the relevant product types to include in the scope of an anti-subsidy investigation are those considered to be subsidized from a countervailable subsidy. In such case a countervailing duty may be imposed for the purpose of offsetting any subsidy granted directly and indirectly for the manufacture, production, export or transport of any product.
- (40) It is also considered that B100 should not be excluded from the product definition. Firstly, because B100 or pure biodiesel is the core product for which the US subsidies were established. This is clear from the US Internal Revenue Code (US. CODE), in particular Title 26, §40A, point (d), which clearly defines the term biodiesel, that the whole subsidy scheme was implemented to support the biodiesel industry in the USA. Secondly, because during the verification visit at the premises of the USG, it appeared that biodiesel even when blended outside the USA by a company having a subsidiary in the USA could benefit from the Federal biodiesel Tax credit of USD 1 per gallon in the USA.
- (41) The investigation has also showed that the production of pure biodiesel by any producer in the USA triggers the issuance of producer certificate mentioned in recital (51) of the provisional Regulation. This certificate is transferable and must be presented to the US Government when the claim for subsidy is introduced.
- (42) Based on the above facts and considerations, it is confirmed that all types of biodiesel and the biodiesel in the blends covered by this investigation, namely pure biodiesel (B100) and blends above B20, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.

⁽¹⁾ Case T-348/05: JSC Kirovo-Chepetsky Khimichesky Kombinat v Council, 10 September 2008, paras 61-63.

2.2. Like product

- (43) It was provisionally found that the products produced and sold on the domestic market of the USA, which are covered by this investigation, have similar basic physical, chemical and technical characteristics and uses as those exported from this country to the Community market. Similarly, the products manufactured by the Community industry and sold on the Community market have similar basic physical, chemical and technical characteristics and uses when compared to those exported to the Community from the country concerned.
- (44) Therefore no differences were found between the various types of the product concerned and the Community product types sold on the Community market which would lead to the conclusion that the product types produced and sold on the Community market are not like products, sharing the same or very similar basic physical, chemical and technical characteristics as to the types of the product concerned produced in the USA and exported to the Community. It was therefore concluded that all types of biodiesel covered by this investigation are considered to be alike within the meaning of Article 1(5) of the basic Regulation.
- (45) One party claimed that the definition of the like product is intricately linked to the identification of the product concerned and must be established in term of physical characteristics and end-use of the product. They basically said that B20 is not used for consumption in the EU but rather an even lower blend which is B5. Hence the like product was wrongly defined. They also claimed that the definition of the product concerned cannot be changed whilst maintaining a different like product.
- (46) As it clearly appears in recital (31) to (37) of the provisional Regulation, the definition of the like product is linked to the identification of the product concerned and was mainly established in term of physical characteristics of the product. The actual end-use of the products was also taken into account and it was considered that the threshold of B20 should also be maintained for the definition of the like product. In this case, the number of product types covered by the definition of the like product has also been reduced to match with the definition of the product concerned.
- (47) Hence, the claims of the parties that the definition of the like product was incorrect have to be rejected and the provisional definition of the like product can be confirmed.
- inally chose the sample. On this basis, the company should not have been excluded from the sample.
- (49) In regard to this claim, it is noted that, whether or not the company is included in the sample has no material impact on the company in terms of the outcome of the investigation. If it were to be included in the sample, the company would have its own individual countervailing duty rate established as was done at provisional stage even though the company was excluded from the sample. The current Regulation also establishes an individual countervailing duty rate for the company. Following final disclosure of these findings, the company claimed that its 'de-facto exclusion' from the sampled exporters prevented it from some substantive rights, including rights resulting from specific calculations as applied to data provided by the sampled exporters. In reply to this, it is noted that a specific calculation was made of the level of subsidisation of this company. In regard to the injury margin for this company, this was established as set out in recitals (173) to (175) below, i.e. on the basis of facts available under Article 28 of the basic Regulation given that the company did not provide the requested information in regard to its export sales and resales in the Community. In these circumstances, the company's claim is rejected.
- (50) One company claimed that the countervailing duty rate appeared to have been calculated on the basis of domestic sales in addition to export sales. The company asked that the calculations be corrected accordingly.
- (51) In regard to this claim, it is noted that all of the subsidy schemes that are being countervailed have been found to be domestic subsidies, i.e. they equally benefit domestic as well as export sales. In line with standard practice the amount of benefit from each scheme in the IP has been allocated over total sales of the product concerned (i.e. domestic plus export sales). The company's claim is therefore rejected.
- (52) This company as well as another company also pointed out that the CIF values used for calculating the countervailing duty rate are not the same as the ones used for the injury and dumping calculations. The companies consider that, in order to ensure consistency, the correct CIF values which have been used for the dumping and injury calculations should also be used for the countervailing duty rate calculations.
- (53) In regard, to this claim, it must again be pointed out that, as mentioned in recital (51) above, all of the subsidy schemes that are being countervailed have been found to be domestic subsidies. In these circumstances, the denominator used in establishing the benefit in the IP is total sales unlike in anti-dumping proceedings where the denominator is export sales to the EU only. In these circumstances, this claim is rejected.

3. SUBSIDISATION

3.1. General

- (48) One company claimed that the reasons set out in recital 9 of the Provisional Regulation for its exclusion from the sample were known to the Commission when it orig-

(54) A number of companies and the National Biodiesel Board (NBB) argued that a countervailing duty should not be levied on imports of B100 on the grounds that the subsidy and injury margins have been calculated without including sales of B100. In regard to this claim, it is noted that sales of B100 produced by the sampled companies have been taken into account in calculating the amount of countervailable subsidies as well as in the calculation of the injury margin. In these circumstances, this claim is rejected.

3.2. Excise tax/Income tax credit

(55) One company claimed that the amount of benefit that it received under the federal excise tax/income tax credit in the investigation period (IP), would be less than USD 1 per gallon if the benefit were to be calculated by spreading it over the total sales volume in the IP.

(56) In regard to the benefit received under the excise tax/income tax credit scheme, this was calculated, as stated in recital (59) of the provisional Regulation, on the basis of USD 1 per gallon of neat biodiesel sold in the IP, whether sold as pure biodiesel (B100) or in a blend. This benefit was reflected in the level of provisional countervailing duty imposed. The provisional duty, and indeed the definitive duty now to be imposed by this regulation, provides that the countervailing duty on blends shall be applicable in proportion in the blend of the total content of biodiesel. In these circumstances, it is considered that a duty based on USD 1 per gallon of neat biodiesel correctly reflects the benefit in the IP as a lesser duty is imposed on, for example, imports of B99 given that it contains less biodiesel. In these circumstances, the company's claim is rejected.

(57) A number of companies and the NBB claimed that, as no federal excise tax/income tax credit is available on sales of B100, there is no basis to consider that such sales have benefited from this tax credit. One of these companies argued in particular that, for their sales of B100 in the IP, it had not been demonstrated that they had been the indirect recipient of the USD 1 per gallon tax credit.

(58) In addressing these claims, it should be recalled that the US Code provides that the biodiesel mixture credit will not be granted unless the company (blender) that makes the mixture of biodiesel and mineral diesel obtains a certificate ('Certificate for Biodiesel') from the producer of the biodiesel in which the producer certifies the quantity of biodiesel to which the certificate relates. The biodiesel certificate is transferable, entitling the holder to a USD 1 per gallon tax credit for the number of gallons of biodiesel used by the claimant in producing any biodiesel mixture. In regard to sales of B100 by the investigated companies in the IP, there is a benefit to the companies as the biodiesel certificate confers a right to a USD 1 per gallon tax credit.

(59) Following final disclosure, some parties argued that the benefit from the blender's tax credit is obtained by the blender of the biodiesel and that there has been no determination that for sales of pure biodiesel (B100), the benefit would be received by the producer/seller of the B100. In reply to this, it should be noted that, as explained above, the biodiesel certificate is transferable. In effect, therefore, the holder of the certificate knows that the certificate has a value of USD 1 per gallon.

(60) The USG considered that, as it was stated in recital 44 of the Provisional Regulation that in order to be eligible for the biodiesel mixture credit a company must create a mixture of biodiesel and diesel fuel, the amount of benefit should not be established on the basis of pure biodiesel or in a blend as stated in recital (59) of the Provisional Regulation. In this regard, it is pointed out that, for the reasons mentioned in recital (58) above and as addressed in recitals (54) to (55) of the Provisional Regulation, it is considered that all biodiesel is subsidised.

(61) In these circumstances, it is considered that sales of B100 have been found to confer a benefit to the producers of this product and the claims in recitals (57) to (60) are therefore rejected.

(62) Some companies and the NBB argued that a countervailing duty should not be levied on imports of B100, since such sales to the EU cannot benefit from the biodiesel tax credit. As stated in recital (60) above, it was found that all biodiesel is subsidised through the tax credit scheme. In these circumstances, it is considered that a countervailing duty can be levied on imports of pure biodiesel and biodiesel in a blend. It should furthermore be noted that sales of B100 to the Community are also eligible for benefits under the Small Agribiodiesel Producer Income tax credit.

(63) During the IP, some of the companies in the sample had exported small quantities of B100 to the Community. However, there appeared to be no economic justification to export B100 in lieu of B99 to the Community, as only the latter directly or indirectly would have benefitted from the biodiesel mixture credit unless the exporter or the purchaser qualified for the above-mentioned income tax credit. If that is the case, there would be a benefit for the US producer in the same way as for sales of B100 on the domestic market. Following final disclosure, the USG stated that no evidence had been cited to substantiate the statement that there is no economic justification to export B100 in lieu of B99 to the Community. In this regard, it must be pointed out that the finding above states that there 'appears' to be no economic justification to export B100 in lieu of B99 to the Community. The reasons for this conclusion are as set out above.

(64) Therefore, in view of the fact that it is perfectly possible that export of B100 could be subsidised and that there appears to be no economic justification to export to the Community without a subsidy, the above claims are rejected.

(65) In the light of the above, the findings in relation to this scheme as set out in recitals (41) to (63) of the provisional Regulation are hereby confirmed.

3.3. Small Agribiodiesel Producer Income tax credit

(66) In the absence of any comments concerning this scheme, recitals (64) to (72) of the provisional Regulation are hereby confirmed.

3.4. The US Department of Agriculture Bioenergy Program

(67) In the absence of any comments concerning this scheme, recitals (73) to (86) of the provisional Regulation are hereby confirmed.

STATE SCHEMES

(68) In the absence of any comments concerning the schemes mentioned below, recitals (87) to (157) of the provisional Regulation are hereby confirmed.

— Illinois biodiesel tax exemption

— Missouri qualified biodiesel producer incentive fund

— North Dakota biofuels partnership in assisting community expansion (PACE) loan Program

— North Dakota biodiesel production equipment tax credit

— North Dakota biodiesel income tax credit

— Texas ethanol and biodiesel blend tax exemption

— Texas fuel ethanol and biodiesel production incentive program

— Washington State biofuels production tax exemption

3.5. Amount of countervailable subsidies

(69) 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 %. As these are at the same level as set out in recital (158) of the provisional Regulation, that recital is therefore confirmed.

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

- (70) The methodology for establishing the subsidy margin for the cooperating companies not included in the sample was set out in recital (159) of the provisional Regulation. In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for the cooperating companies in the sample, is 36,0 %. Hence, recital (159) of the provisional Regulation is confirmed.
- (71) The basis for establishing the country-wide subsidy margin was set out in recital (160) of the provisional Regulation. In the absence of any comments in this regard, recital (160) of the provisional Regulation is confirmed.

4. COMMUNITY INDUSTRY

4.1. Community production and standing

- (72) One interested party contested the exclusion from the assessment of total Community production of the group of producers related to an exporting producer in the USA mentioned in recital (162) of the provisional Regulation on the basis of Article 9(1) of the basic Regulation. It argued that the correct denominator to establish support to the complaint should be kept at around 5 400 thousand tonnes and not decreased to between 4 200 to 4 600 thousand tonnes as was done at provisional stage.
- (73) The relevant provisions of the basic Regulation to assess standing or the support for the investigation are Article 9(1) and Article 10(8) of the basic Regulation. For information, the relevant provisions of the Agreement on Subsidies and Countervailing Measures concerning the definition of the domestic industry are contained in the EU's legislation in Article 9(1) of the basic Regulation. From these provisions, it is clear that the definition of the domestic production to establish standing should be made in conjunction and is subject to the same requirements as those for the definition of the domestic industry. In any case this claim is not such as to alter the conclusion that the investigation was supported by a major proportion of Community production. Even if the denominator was kept at 5 400 thousand tonnes, the support for the investigation would be above 50 %, namely largely above the requirements of the basic Regulation.
- (74) The same interested party argued that in the light of the definition of the product concerned and the like product which is biodiesel whether in pure form or in blends containing more than 20 % biodiesel (B20), the Community industry and Community production must be composed of all Community companies producing biodiesel and blends above B20. It claimed that there is no evidence that the complainant or the Commission has

sought to include these companies into the total production or determined that these producers supported the complaint.

- (75) In this regard it is noted that the total Community production figure indicated in recital (162) of the provisional Regulation does indeed take into account the production volume of biodiesel in blends above B20. It can further be clarified that according to available information, the production in the Community of blends containing between 21 % (B21) and 99 % (B99) of biodiesel has been very limited during the IP. The only production of blends in this range was concentrated on blends of B30 and did not exceed 60 000 tonnes in terms of biodiesel content. Moreover, the Commission has contacted known producers of B30 after the imposition of provisional measures and the responses received from two of the producer indicate that they support the complaint.

- (76) In the absence of any other comments recitals (161) to (163) of the provisional Regulation concerning the definition of Community production, Community industry and standing are hereby confirmed.

4.2. Sampling

- (77) One party argued that the performance of one sampled Community producer that failed to cooperate in the investigation was very good and it should have been taken into account in the assessment of injury to the Community industry. It was claimed that this producer was not injured during the IP and that best facts available should be used in accordance with Article 28 of the basic Regulation. In this regard the party suggested using the publicly available financial data of this producer for 2007 and 2008 for the examination of injury to the Community industry.
- (78) It is common practice in anti-subsidy investigations that the Commission exclude producers that failed to cooperate for the purpose of the assessment of injury and not to use facts available in line with Article 28 of the basic Regulation. The data concerning injury cover an extended period of 4 years and it is not possible to obtain based on public sources all the necessary information to establish all injury indicators for the whole period. In this particular case, the said Community producer was excluded from the investigation because it had failed to provide complete meaningful information for the years 2004 to 2006 and it only provided partial information for 2007 and the IP. Using the public information for this producer's biodiesel activity for 2007 and 2008, would not have allowed to obtain data for all injury factors and for all the years of the period considered. This would have distorted the trends which are relevant for the assessment of injury.

(79) Moreover, maintaining the said producer in the sample would have not allowed the assessment of undercutting to be made for the totality of the sales of the sampled producers as the said company did not provide a listing with its detailed sales by product type for the IP. Finally, it is noteworthy that contrary to the claim made by the interested party, the financial performance of the said producer, in terms of profitability as shown in its publicly available data, was well below the average profitability established for the co-operating sampled Community producers as shown in Table 7 of the provisional Regulation. On the basis of the above the request made by this party had to be rejected.

(80) The same party claimed that the sample of Community producers was not representative of the Community industry as it was based only on producers of pure biodiesel (B100) and therefore failed to include producers of blends from B99 down to B20 as well as blenders of B100.

(81) In this regard it is recalled that as mentioned in recital (75) above, the Community production of biodiesel blends between B20 and B99 has been very limited during the IP. In view of this limited quantity, which represents less than 2 % of total Community production

of the like product in the IP, it can be concluded that the selection of the sample which was mainly based on the largest volume of production and sales within the Community was representative. As far as the blenders of B100 is concerned these companies could not be considered as producers of the like product as they are processing by a simple blending operation an existing like product. The claim was therefore rejected.

(82) In the absence of any other comments recitals (164) to (166) of the provisional Regulation are hereby confirmed.

5. INJURY

(83) As mentioned in recital (17) above, the examination of the trends concerning the assessment of injury covered the period from January 2004 to the end of the IP. However the investigation showed that the Community industry was practically starting up in 2004. It was, thus, considered more appropriate to make an analysis on the possible injury and the economic situation of the Community industry based on trends for the period 2005 to the IP ('period analysed'). As no party commented on this approach recital (167) of the provisional Regulation is confirmed.

5.1. Community consumption

Table 1

Community Consumption	2004	2005	2006	2007	IP
Tonnes	1 936 034	3 204 504	4 968 838	6 644 042	6 608 659
<i>Index 2005=100</i>	60	100	155	207	206

(84) In the absence of any comments that could justify a change concerning the Community consumption as shown in the above table, recitals (168) to (173) of the provisional Regulation are hereby confirmed.

5.2. Volume of imports from the country concerned and market share

(85) The table below shows the total imports into the Community market made by US exporting producers during the period considered.

Table 2

All imports from USA	2004	2005	2006	2007	IP
Tonnes	2 634	11 504	50 838	730 922	1 137 152
<i>Index 2005=100</i>	23	100	442	6 354	9 885
Market share	0,1 %	0,4 %	1,0 %	11,0 %	17,2 %
<i>Index 2005=100</i>	25	100	250	2 750	4 300

Source: USA export statistics.

- (86) One interested party claimed that the injury and causation analysis of the anti-subsidy proceeding should be made on different data than that made in the parallel anti-dumping proceeding. It was argued that the subsidy findings are based on i) own produced, ii) produced and blended and iii) purchased and blended biodiesel exported to the Community whereas the dumping findings, in particular the export sales to the Community, are based only on the own produced biodiesel of the sampled producers.
- (87) This claim would appear to suggest that the anti-dumping proceeding should always be based on a narrower data in relation to the anti-subsidy proceeding. However, at provisional stage it was found in the parallel anti-dumping proceeding that all the exports of the own production of the companies included in the sample of US producers were made at dumped prices in the Community market. A similar finding was made in the present anti-subsidy investigation. Thus in both investigations all exports made from the USA were deemed to be dumped and subsidized and were thus all included in the injury and causation analysis.
- (88) It should, however, be pointed out that, at definitive stage, one sampled US company was found not to be dumping and this has led to a difference between the volume of dumped imports and the volume of subsidized imports to be considered in the injury and causation analysis of the proceedings. In the anti-dumping proceeding, the overall volume of dumped imports from the USA has been adjusted to take into account the fact that the imports of one sampled exporting producer were found not to be dumped. This has no bearing, however, on the anti-subsidy proceeding.
- (89) In view of the above the claim had to be rejected.
- (90) One interested party claimed that the HTS heading 3824 90 of the USA export statistics which was used in the provisional Regulation to establish the imports from the country concerned would also cover, in addition to biodiesel, other products such as 'fatty substances of animal or vegetable origin and mixtures thereof'. The analysis of the import volume from the USA was therefore deficient. The same interested party proposed that the trends established for the investigated US producers be used instead.
- (91) In this regard, it is firstly noted that the US HTS code 3824 90 4000 was used in order to compute the import volumes originating in the USA and not the six-digit tariff heading claimed by this party.
- (92) Moreover, it is recalled that as mentioned in recital (170) of the provisional Regulation, Eurostat data could not be used for the purpose of assessing the imports of biodiesel from the USA because until the end of 2007 there was no distinct CN code available for the customs classification of that product. Biodiesel could indeed have been classified under various CN codes which also contained import data for other products. The reason why the USA export statistics were used was that they appeared to capture the exports of the product concerned under one tariff code and that the volume of other products captured under the same code would be of insignificant importance as far as exports to the Community are concerned.
- (93) In view of the limitations to use Eurostat data, another alternative to the US export statistics would have been to use the import data reported in the complaint. This data was obtained by the complainants from confidential market intelligence sources and therefore recourse to such information would have been subject to this limitation. However, for the sake of completeness the trends of import volumes would have shown the following picture in an indexed form:

Table 3

Imports from USA	2004	2005	2006	2007	IP
<i>Indexed 2005=100</i>	0	100	1 359	15 059	15 394

- (94) The comparison of the Table 3 with Table 2 above would demonstrate that the Commission's assessment of the import volumes of the product concerned over the analysis period was more conservative than the one that could have been alternatively used. Moreover, this overall picture of the import volumes of Table 3 is compiled from confidential data not susceptible to disclosure whereas the USA statistics is publicly available information.
- (95) The proposed method by the interested party would have shown the following picture regarding the trends of the export volumes on the basis of the information collected from the investigated exporting producers:

Table 4

Imports from USA	2004	2005	2006	2007	IP
<i>Indexed 2005=100</i>	16	100	461	6 180	9 005

- (96) The comparison of Table 4 with Table 2 above would demonstrate very similar trends between the method used by the Commission and the one proposed by this party.
- (97) The same interested party also claimed that because the product concerned is biodiesel and blends of biodiesel with a biodiesel content above 20 % the volume of imports shown in Table 2 above could not correlate with the correct import volume for the product concerned.
- (98) In this regard it is noted that the investigation has not identified any imports of the product concerned with a biodiesel content above B20 and below B99 during the IP. In other words the investigation has not identified any imports of the product concerned that because of their low biodiesel content would be classified under a different US HTS code.
- (99) On the basis of the above it is concluded that the import volume presented in the Table 2 of the provisional Regulation represents a reliable, objective and conservative estimation of the imports into the Community of the product concerned.
- (100) One interested party claimed that the splash and dash quantities exported from the USA should have been distinguished from the imports of the product concerned originating in the USA as the former cannot be treated as imports of US origin.
- (101) In addition the same party and the USG claimed that contrary to what was stated in recitals (179) and (182) of the provisional Regulation all exports from the USA are not deemed to be originating in the USA. There is no authority in the USA that makes an assessment or a determination with respect to the country of origin of a particular product for export and it cannot be assumed that all biodiesel leaving the territory of the USA is of US origin.
- (102) The same party also stated that the origin regulations established by the US Census Bureau regarding the determination of the origin of the exported goods are not widely known to the biodiesel industry and therefore the exporters of biodiesel when filling out the 'Shippers Export Declaration' (SED) normally indicate that the goods exported are of domestic origin.
- (103) It further reiterated its claim made at provisional stage that volumes imported in the Community under the *splash and dash* pattern would represent more than 40 % of the product concerned exported from the USA. In support of its claim it used the US import and export data of the HTS codes 3824 90 4020 and 3824 90 4000, and practically claimed that all imports of biodiesel in the USA were re-exported under the *splash and dash* pattern to the Community.
- (104) On the above it is noted that the clarification requested by the US authorities regarding the fact that no US authority makes an assessment or determination of the origin of a particular product for export can be accepted.
- (105) The claim that *splash and dash* would represent at least 40 % of the US exports to the Community was based on the assumption that all biodiesel imported in the USA would ultimately be re-exported to the Community under the *splash and dash* pattern without any volume being consumed in the USA or further being blended in the USA before exportation.
- (106) However, the data presented by this party showed that in the years 2004 to 2006 the imports exceeded by far the exports which would suggest that there is a domestic demand for biodiesel in the USA from other countries. Moreover, this assumption is rather simplistic as it does not take into account the quantities of biodiesel blended in the USA and exported to the Community in which i) the characteristics of the blends are different from those of the input materials which would confer US origin to the whole blended product or ii) blends in which the proportion of US origin biodiesel being the dominant one would confer US origin to the whole blended product. It is recalled in this respect that, as mentioned in recital (180) of the provisional Regulation, the US companies investigated declared that it was not possible to differentiate in the quantities exported to the Community or sold on the domestic market between the quantities own produced or sourced in the USA or imported. It is also noted that the origin would appear to have correctly been declared by the US companies concerned as in all of the cases further blending of non-US origin biodiesel was taking place in the USA. Indeed, in most of the cases the investigated exporting producers are very large companies or groups of companies with related companies in the Community for which it is difficult to accept that they were not aware of the existing US and Community rules regarding the origin determination.

- (107) On the basis of all the above it is concluded that there are no grounds to clearly identify the imports made in the Community under the *splash and dash* pattern for the period considered. It is also considered that there are no grounds to treat these exports, if any, as non-US origin imports.

5.3. Prices of the subsidised imports and price undercutting

5.3.1. Unit selling price

- (108) The table below shows the unit selling price of all imports into the Community market originating in the USA during the period considered as ascertained in recitals (183) and (184) of the provisional Regulation.

Table 5

All imports from USA	2004	2005	2006	2007	IP
Prices in EUR/tonne	463	575	600	596	616
Index2005=100	81	100	104	104	107

Source: US export statistics and questionnaire replies of the sampled US exporters.

5.3.2. Price undercutting

- (109) For the purpose of analysing price undercutting, the weighted average sales prices of the sampled Community producers charged to unrelated customers on the Community market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the dumped imports from the USA, established on a CIF basis for the sampled exporting producers in the USA which were found to be dumping into the Community market. An adjustment for the customs duties, post-importation costs and for the differences in feedstock used for the production of biodiesel was applied where appropriate as described in recital (186) of the provisional Regulation.
- (110) Certain exporting producers claimed that the adjustment for the differences in feedstock was understated as it did not reflect correctly the market value of the differences. They further claimed that the differences should be obtained on the basis of the prices for the different types of biodiesel in the Community market and quantified this claim by reference to the price quotations, customs cleared Antwerp based, published by a market analyst.
- (111) In this regard it is noted that the adjustment was based on the overall, verified data collected from the sampled exporting producers for their operations in the USA and was, therefore, based on the findings of the investigation which is the most reliable source of information. Moreover, the price quotations at Community level would have been an inappropriate basis for this adjustment as these price levels would have been influenced by the price levels of the subsidised imports originating in the USA. On this basis the claim was rejected.
- (112) The same exporting producers claimed that the adjustment for feedstock differences should only be applied to the sales of the sampled exporting producers and not to the sales of the sampled Community producers as the sales of the latter consist of blends compatible with the Community standards.
- (113) This claim was found to be irrelevant as the purpose of the adjustment was to address the differences in feedstock and not any differences in meeting the different standards applicable at Community level. The claim was, therefore rejected.
- (114) The complainant contested the appropriateness of this adjustment by claiming that both Community producers and US exporters use a variety of feedstock and both produce a variety of blends which are provided on both markets and are, therefore, operating with the same range possibilities when it comes to the raw material choice.
- (115) In this regard it is noted that, whilst it is true that both Community producers and US exporting producers use a variety of blends based on different feedstock, the repartition of feedstock in the blends may differ significantly from producer to producer and even from customer to customer of the same producer. Indeed, the investigation has shown that a precise matching in the blends sold by the sampled Community producers and those sold by sampled exporting producers on the Community market was met in very few occasions. Therefore, in order to allow for undercutting calculations to take into account the different product types of biodiesel, it was considered indeed necessary to make the adjustment for differences in feedstock. Therefore, this claim had to be rejected.

- (116) Certain exporting producers claimed that the prices used for the injury margin calculations were the CIF Community frontier prices rather than the resale prices to the first unrelated customer. They claimed that these calculations have to be corrected in order to take into account the value and quantities of sales to the first unrelated customer.
- (117) This claim was found to be relevant for two exporting producers and the injury calculations were corrected accordingly.
- (118) On the basis of the above, the average price undercutting margin in the IP, expressed as a percentage of the Community industry's weighted average ex-work prices, was found to range from 18,9 % to 31,9 %, instead of a range from 18,9 % to 33,0 % at provisional stage.

5.4. Economic situation of the Community industry

- (119) As mentioned in recitals (209) to (212) of the provisional Regulation, it was found that the Community industry suffered material injury within the meaning of Article 8(5) of the basic Regulation.
- (120) Indeed, the provisional analysis showed that the performance of the Community industry improved as regards some volume indicators, but that most of the indicators related to the financial situation of the Community industry significantly deteriorated during the period considered. Notwithstanding the Community industry's ability to raise capital for investments, return on investments declined dramatically during the IP and profitability declined significantly over the period considered.
- (121) One interested party claimed that the analysis made in recital (195) of the provisional Regulation regarding the growth of the Community industry was incorrect. In particular, this party argued that the provisional Regulation suggested that the strong increase in demand for biodiesel in the Community market was supposed to lead to a comparable increase in the market shares of the Community industry, while there is no direct correlation between the increase in demand and market share.
- (122) The same party further argued that the injury factors mentioned in the same recital (195) of the provisional Regulation, namely production, utilisation of production capacity, productivity, sales, investment policy, return on investments, cannot be considered as severely affected.
- (123) The argument regarding the de-correlation between demand and market share is accepted. However, it remains that between 2006 and the IP, the market share of the sampled Community producers was multiplied by 1,2 while during the same time, the market share of subsidised imports was multiplied by around 17. This comparatively strong increase in market share for US imports is the result of much lower sales prices for these US imports as shown in table 5 and recital (118) above.
- (124) Regarding the claim about the global assessment of all injury factors, it is acknowledged that not all these factors were deteriorating during the period considered. However, it is stated that factors relating to financial situation of the Community industry were indeed severely affected, namely the profitability and the return on investment and to a lesser extent productivity was affected. This stems from the fact that the Community industry had to adapt to the competition of price-setting subsidised US imports, and chose to maintain their presence on the market to the detriment of their profitability, rather than preserving their profitability but losing market shares.
- (125) Certain interested parties and the USG claimed that the levels of profitability and return on investment for the sampled EU producers are still good in 2007 and during the IP, in absolute value, in spite of the strong decrease compared to the previous years. They argue that the levels of profitability and return on investment achieved from 2004 to 2006 were not sustainable and that the EU biodiesel industry, as all nascent industries, experienced a normal 'boom and bust' phenomenon during the period considered.
- (126) In this regard, it is recalled that some US sampled companies achieved much higher profitability, exceeding 30 %, in the similar context of a developing market during the period considered. It is also stated that the decrease of profitability and return on investment experienced by the Community industry was very brutal since it occurred from 2006 to 2007, and coincides exactly with the surge of U.S. imports of biodiesel.
- (127) Several Community producers claimed that the situation of non-sampled Community companies should be fully taken into account in the injury assessment, in particular in the light of the numerous cases of downsizing, closures or postponement of new projects that were identified among these companies during the period considered.
- (128) On the other hand, one interested party claimed that the reference made in the provisional Regulation to producers in the Community not included in the sample is irrelevant, as the unverified data from non-sampled producers cannot be used for the demonstration of injury. This party further insists on public data showing that some of these non-sampled producers are profitable.

(129) Regarding the two claims above, it is recalled that the provisional Regulation in its recitals (205) to (208) refers to the situation of the non-sampled producers in the Community as a supplementary indication of injury, without impacting the calculations of the injury indicators and injury margin for which verified information was actually used. Therefore the claim of this party was rejected. On the other hand, in the absence of available verified statistics or individual information regarding the situation of all non-sampled EU producers, it is not possible to make any accurate determination for the Community producers as a whole as suggested by the Community producers. This claim was therefore also rejected.

(130) In the absence of any other comments on the provisional findings concerning the economic situation of the Community industry, recitals (188) to (194) and (196) to (208) of the provisional Regulation are hereby confirmed.

(131) The conclusion that the Community industry suffered material injury, as set out in recitals (209) to (212) of the provisional Regulation, is also confirmed.

6. CAUSATION

6.1. Effect of the subsidised imports

(132) It is recalled that the subsidised import volumes from the USA increased significantly during the period analysed. There was also a clear coincidence in time between the surge of subsidised imports and the deterioration of the economic situation of the Community industry. That industry was not able to set its prices in line with market conditions and the cost increases, as its prices were undercut during the IP by the subsidised imports.

(133) It is therefore confirmed that the surge of low-priced subsidised imports from the USA had a considerable negative impact on the economic situation of the Community industry during the IP.

6.2. Effect of other factors

6.2.1. Imports from other third countries

(134) In the absence of any comments that would justify a change in the provisional findings it is confirmed that imports from other third countries cannot have made more than negligible contribution to the injury suffered by the Community industry.

6.2.2. Development of demand

(135) One interested party claimed that the contraction in demand between 2007 and the IP even being negligible (0,5 %) would nevertheless have caused injury to the Community industry by alleging that an hypothetical

increase of 10 % in demand would have yielded an additional volume of sales of 205 733 tonnes if the Community industry would have maintained the same market share of 29,8 % that was recorded during the IP.

(136) In this respect it is noted that the claims made by this party were based on broad and unsubstantiated assumptions. Moreover, in view of the fact that between 2007 and the IP the market share of the Community industry increased by 2,8 percentage points, would indeed support the conclusion reached in recital (223) of the provisional Regulation that injury suffered by the Community industry cannot be attributed to this slight contraction in demand between 2007 and the IP. Therefore, in the absence of any other comments concerning the development of demand on the Community market recital (223) of the provisional Regulation is confirmed.

6.2.3. Public Policy Decisions

(137) One interested party reiterated its claim that the reintroduction of energy tax in Germany would have negatively influenced the economic situation of Community producers supplying that market as because of these measures the biodiesel demand for B100 representing at least 1,5 million tonnes would have collapsed. It further claimed, in response to the findings of the investigation set in recital (225) of the provisional Regulation, that even if the introduction of a blending requirement of 4,4 % for the diesel placed in the German market for transport purposes (B5) would have compensated the alleged sales losses of B100, the prices levels of B100 would be different from those of biodiesel intended for the B5 blends. It alleged that B100 was produced only from the more expensive rapeseed feedstock, whereas biodiesel B5 from a variety of feedstock, thus having a negative influence on the average price of the Community producers.

(138) In this respect it is recalled that, contrary to the allegations made by this party, the investigation has shown that the sales volumes of the sampled Community producers supplying the German market rose by 68 % between 2006 and the IP, which would indeed confirm the provisional finding that any losses on B100 sales were compensated by the mandatory blending requirement. It is further noted that the introduction of the Euro 0,09 per litre of biodiesel as of 1 August 2006 did not lead to the collapse of the market as alleged by this party, but indeed B100 sales were reduced significantly in the last quarter of the IP when this tax was further increased to Euro 0,15 per litre as of 1 January 2008. Regarding the effect on prices, the allegations made by this party were unfounded as the biodiesel used for both types of products had to conform with the same standards which means that in both biodiesel fuels the same mix of feedstock could be used which means that there is no proven price differentiation between the two types of biodiesel. On the basis of the above the claim was rejected.

(139) In the absence of any other comments concerning the public policy decisions recital (226) of the provisional Regulation is confirmed.

6.2.4. Idle production capacity of Community producers

(140) One interested party, whilst accepting that capacity utilisation rates remained fairly high for the sampled Community producers, claimed that the overcapacity of the sampled Community producers would still be a cause of injury in view of the fact that it would result in higher fixed costs that would have a negative effect on profitability. It further claimed that the increase in the net asset value of the said producers would have resulted in fixed cost increases as depreciation and financial costs would have been higher.

(141) In this regard it is recalled that from detailed analysis of the repartition of variable and fixed costs in the cost structure of the Community industry it was established that the share of fixed costs represented only 6 % of overall costs (recital 228 of the provisional Regulation). In addition, it should be noted that this analysis showed insignificant fluctuations of this percentage over the period analysed. With regard to the claim concerning the effect on profitability caused by the increase in the net asset value, it should be noted that the increase in costs in absolute terms, does not automatically lead to an increase in the unit production cost as the latter depends on the volume of output which as shown in Table 4 of the provisional Regulation increased steadily over the period analysed. Therefore higher fixed costs in absolute terms were attributed to higher output volume resulting in the above mentioned repartition of fixed costs in relation to overall costs. On this basis the claims made by this interested party had to be rejected.

(142) The same party alleged that overall overcapacity of the Community producers has a direct impact on prices as there would be a fierce battle among producers to gain contracts up to marginal costs and therefore, producers with high utilisation rates must have been the most aggressive on their sales to undercut the price of their competitors. In support of its claim it submitted an announcement of one sampled company to its financial statements of year 2007.

(143) The allegations, however, of this party were not supported by any evidence as no reference to the alleged battle of prices due to overcapacity was indicated in this statement. The statement rather referred to the increase by the German government of the energy tax on B100 biodiesel as of 1 January 2008 which stimulated competition in the B5 market of biodiesel. On the basis of the above the claim had to be rejected.

(144) In the absence of any other comments concerning the idle capacity of Community producers, recitals (227) to (230) of the provisional Regulation are confirmed.

6.2.5. Increased demand for feedstock and increasing prices

(145) One interested party and the US government claimed that none of the arguments in recitals (231) to (235) of the provisional Regulation addresses the issue that the prices of soybean oil, palm oil and canola oil in the USA at all times since 2004 remained significantly below the prices for rapeseed in the Community which yields a significant competitive advantage to the biodiesel imported from the USA.

(146) It is recalled that the investigation has to establish whether the subsidised imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 8(6) of the basic Regulation states that it is necessary to show that the price level of the subsidised imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

(147) In practice, the effect of the subsidised imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the subsidised export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may need in certain cases to be adjusted in order to have a comparable basis. Consequently, the use of adjustments in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the prices of raw materials in the exporting country cannot in principle be another factor of injury.

(148) The above is also confirmed by the wording of Article 8(7) of the basic Regulation, which refers to known factors other than subsidised imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the subsidised imports. To summarise, if the imports are subsidised, and even if they benefited from a favourable development of raw material prices, it is not considered that such development could be another factor causing injury.

(149) Thus, the analysis of the factors affecting the level of the prices of the subsidised imports, such as the alleged competitive advantage due to lower raw material prices, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation.

(150) In any event, and without prejudice to the above, it has to be recalled that a general increase in prices of agricultural products worldwide took place during the IP and that the increase in soybean oil (the main feedstock used by the producers in the country concerned) was more pronounced than the increase of rapeseed oil over the same period. However, these increases in costs in the USA were not reflected in the prices of the subsidised imports in the Community market which significantly undercut the prices of the Community industry.

(151) In light of the above, the claim made by these parties had to be rejected.

(152) In the absence of any other comments concerning the increased demand for feedstock and increasing prices recitals (231) to (238) of the provisional Regulation are confirmed.

6.2.6. Price development of mineral diesel

(153) One interested party reiterated its claim (see recital 236 of the provisional Regulation) and further argued that the prices of mineral diesel would set a cap beyond which the producers of biodiesel would not be able to increase their prices in line with the increases in feedstock.

(154) In this regard it is noted that all of the Community producers were supplying markets where mandatory blending targets exist. In addition, biodiesel was subject to detaxation in most of the Member States which means that its price is comparable with the price of mineral diesel increased with a factor to take into account the energy tax that the latter is subject to. This means that while one can accept a certain correlation with the oil prices, the investigation has established that for the above reasons biodiesel can be indeed sold at higher prices than mineral diesel. Moreover, this party did not submit any convincing evidence showing that the prices of mineral diesel which were at very high levels in the second half of the IP exerted price pressure on the prices of biodiesel of the Community producers during the IP.

(155) In the absence of any other comments concerning the price development of mineral diesel it is concluded that this factor has not caused injury to the Community industry.

6.2.7. Importance of the location of the biodiesel plants in the Community

(156) In the absence of any other comments concerning the location of biodiesel plants in the Community recitals (239) to (241) of the provisional Regulation are confirmed.

6.2.8. Producers related to the US exporters

(157) In the absence of any other comments concerning the impact of imports from the USA by the producers related

to the US exporters, recital (242) of the provisional Regulation is confirmed.

6.2.9. Conclusion on causation

(158) In the light of the foregoing and in the absence of any other comments recitals (243) to (245) of the provisional Regulation are confirmed.

7. COMMUNITY INTEREST

7.1. Community industry

(159) Subsequent to the provisional disclosure the Community industry producers endorsed the findings of the Commission and confirmed that the measures would be in their interest.

(160) One interested party claimed that the measures would not be in the interest of the Community industry as the measures would result in a shift of trade flows, i.e. a switch to imports from countries not covered by measures, because i) the Community market operators would continue to require cheaper biodiesel based on soybean oil and palm oil in order to complement it with the more expensive rapeseed biodiesel which is produced by the Community industry and ii) because the rapeseed oil biodiesel will not be sufficient to cover the demand.

(161) In this regard it is noted that whilst the main feedstock used by the Community industry producers is rapeseed, the same producers did not rely only on this feedstock for their biodiesel production but used also other feedstock such as soybean oil and palm oil. However, in view of the fact that very often the price of other feedstock was higher than the price of the subsidised imports of biodiesel based on such feedstock, the Community industry producers were deprived from the possibility of using soybean oil and palm oil on a larger scale. It is therefore expected that the imposition of measures would also restore normal market conditions in this regard allowing the Community industry producers to adapt more efficiently their production to the different types of biodiesel needed on the Community market. On this basis the claim was rejected.

(162) In the absence of any other comments concerning the interest of the Community industry, recitals (247) to (249) of the provisional Regulation are confirmed.

7.2. Unrelated importers/traders in the Community

(163) In the absence of any reaction from importers after the imposition of provisional measures it is concluded that the effect of the measures will most likely not have a material impact on importers/traders.

7.3. Users in the Community

- (164) In the absence of any reaction from users after the imposition of provisional measures, it is concluded that the countervailing duties will most likely not have a material impact on users.

7.4. Suppliers of raw materials in the Community

- (165) In the absence of any reaction from suppliers after the imposition of provisional measures, recitals (256) to (258) of the provisional Regulation are confirmed.

7.5. Other interests

- (166) Subsequent to the provisional disclosure one interested party claimed that the automobile manufacturers which have invested in producing vehicles adjusted for use with biodiesel may be unable to bring their investments to fruition by selling such vehicles should the prices of biodiesel in the Community because of the measures rise to levels which are not competitive with those of mineral diesel.
- (167) In this regard it is noted that the possibility alleged by this party could have happened even in the absence of measures, i.e. prices of mineral diesel (which depend on the crude oil prices) to drop at levels making them more competitive than biodiesel. Therefore, it would appear unreasonable to suggest that the automobile industry has made investments without taking this parameter into account. Therefore, this claim was rejected.
- (168) Subsequent to the provisional disclosure, one association of EU farmers expressed its support and indicated that the imports of US biodiesel have deprived EU oilseed producers of an outlet of around 6 millions tonnes of oilseeds, or approximately 11 % of EU oilseed production in 2007 and 2008, and led to a 90 Euro per tonne drop in the potential value of rape seed used for non-food purposes. These late comments, however, could not be verified.

7.6. Competition and trade distorting effects

- (169) One interested party reiterated its comments regarding the incoherence of the countervailing measures with the European Union policy to promote the use of biofuels. It added that the European Union cannot depend only on rapeseed-based biodiesel produced in the Community to develop its biodiesel market.
- (170) While this comment has been addressed in section 7.6 of the provisional Regulation, for the issue of rapeseed biodiesel brought up by this party reference is also made to recital (161) above.
- (171) In the absence of any other comments concerning competition and trade distorting effects, recitals (259) to (261) of the provisional Regulation are confirmed.

7.7. Conclusion on Community interest

- (172) Based on the above, it is concluded that there are no compelling reasons against the imposition of countervailing duties in the present case.

8. DEFINITIVE COUNTERVAILING MEASURES

8.1. Injury elimination level

- (173) One company claimed that, in regard to setting its injury margin at the level of the highest injury margin found for the sampled companies (see recitals (268) to (270) of the provisional Regulation), it offered to supply the information necessary to allow for its own margin to be calculated. The company furthermore was prepared to allow a visit to the premises of the company's subsidiary. The company submitted that this invitation is still open.
- (174) Having received this company's reply to the questionnaire response following the initiation of the proceeding, it was noted that there were certain deficiencies in information regarding its export sales to the Community and the resales of its related importer in the Community. The company was asked to provide the information concerned within a specified deadline but the company did not reply to the request. The company was then informed, as stated in recital (268) of the provisional Regulation, that if the requested information was not provided, in accordance with Article 28 of the basic Regulation, the deficient information provided in its questionnaire response may be disregarded. The company was informed about the consequences of its partial co-operation and given an opportunity to comment. The company replied almost two weeks after the prescribed deadline by stating, *inter alia*, that the company 'will submit as a matter of urgency the information requested'. However, the requested information was never provided by the company.
- (175) In light of the above, it is confirmed that the injury elimination level for this company be set at the level of the highest injury margin found for the sampled companies.
- (176) Several interested parties and the USG contested the provisional determination that a profit of 15 % would be the profit margin that could be reasonably be achieved by an industry of this type under normal conditions of competition.
- (177) One interested party claimed that the profit margin for the Community industry used for the determination of the injury elimination level should be set at the level of the profit realised by the Community industry during the IP, namely 5,7 %, because this profit margin would be in the range of profits realised for commodities such as biodiesel. In support of this claim it made reference to profits realised by US producers of ethanol and vegetable oils and by petroleum refineries.

(178) It is noted that the injury elimination level has to be based on an evaluation of the profit that the industry can reasonably expect to achieve in the absence of subsidised imports on the sales of the like product on the Community market. For a given investigation, the profit realised in the beginning of the period considered may be reasonably considered as the profit realised in the absence of subsidised imports. Indeed, in this specific case in the early years of the period considered (2004 to 2006) the imports from the USA never exceeded a market share of 1 % and it can therefore reasonably be concluded that these periods were characterised by the absence of subsidised imports. Therefore, the average profit achieved in these periods by the Community industry was considered as a reasonable basis for determination of the injury elimination level also taking into account the needs to guarantee the production investment of this newly established industry. Moreover, and in relation to the claim made by the interested party, the investigation has shown that the profits realised by the major USA exporting producers for their domestic biodiesel operations were well above the profit used for the determination of the injury elimination level. On the basis of the above the claim had to be rejected.

(179) Certain claims from US companies regarding the conversion of the *ad-valorem* duties into fixed amount duties, described in recital (185) below, revealed that the *ad-valorem* underselling amount was calculated as the ratio between the total underselling and the adjusted CIF price (see adjustment mentioned in recital (109)), whereas the non-adjusted CIF price should have

been used as it was done to calculate the *ad-valorem* dumping margin. Therefore all *ad-valorem* injury elimination levels were recalculated for all the sampled US companies.

(180) In the absence of other comments following the provisional disclosure, the same methodology as mentioned in recitals (266) and (267) of the provisional Regulation has been used to obtain the non-injurious prices. The injury elimination level was calculated as a percentage to the total non adjusted CIF import value.

8.2. Form and level of the duties

(181) In the light of the foregoing and in accordance with Article 15(1) of the basic Regulation, a definitive countervailing duty should be imposed at a level sufficient to eliminate the injury caused by the subsidised imports without exceeding the subsidy margin found.

(182) In view of the comments received by certain interested parties following the provisional disclosure and in view of the revisions described in this Regulation, certain margins have been amended.

(183) On the basis of the above, countervailing duty rates have been established by comparing the injury elimination margins and the subsidy margins. Consequently, the proposed countervailing duties are as follows:

Company	Injury margin	Subsidy margin	Countervailing duty rate
Archer Daniels Midland Company	54,5 %	35,1 %	35,1 %
Cargill Inc.	64,4 %	34,5 %	34,5 %
Green Earth Fuels of Houston LLC	51,3 %	39,0 %	39,0 %
Imperium Renewables Inc.	41,6 %	29,1 %	29,1 %
Peter Cremer North America LP	77,2 %	41,0 %	41,0 %
Vinmar Overseas Limited	76,4 %	41,1 %	41,1 %
World Energy Alternatives LLC	46,1 %	37,6 %	37,6 %
Co-operating non sampled companies	56,2 %	36,0 %	36,0 %

(184) In view of the fact that the countervailing duty will apply to blends containing by weight more than 20 % of biodiesel, in proportion to their biodiesel content, it is considered appropriate for the effective implementation of the measures by the customs authorities of the Member States to determine the duties as fixed amounts on the basis of biodiesel content.

- (185) Certain parties contested the methodology used to convert the *ad valorem* duty rates into duties in the form of fixed amounts. They claimed that the CIF values that should have been used for the conversion of an *ad valorem* duty into a fixed amount should have been the actual CIF values and not the ones adjusted to take into account the feedstock differences described in recitals (185) and (186) of the provisional Regulation.
- (186) This claim was examined and it was indeed found that the adjusted CIF values were used for the conversion of the *ad valorem* duties into fixed amount duties. However, it was also found that the same values were used as the basis for expressing the underselling amount as an *ad valorem* duty. Therefore, a first correction had to be made in expressing the underselling amount as a percentage of the total actual CIF import value. On this basis the injury margins have been revised accordingly. The subsequent calculation of the fixed amount duty rates, however, showed no difference from the duty rates appearing in Article 1(2) of the provisional Regulation since the higher *ad valorem* duty was exactly offset by the decrease of the CIF prices (from adjusted to actual) used for converting expressing the former into fixed duties.
- (187) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (188) Any claim requesting the application of an individual company countervailing duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (189) All parties were informed of the essential facts and considerations on the basis of which it was intended to

recommend the imposition of definitive countervailing duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

8.3. Undertakings

- (190) Certain US cooperating exporting producers offered price undertakings in accordance with Article 13(1) of the basic Regulation. It is noted that in view of significant price variations of the raw material, the product is not considered suitable for a fixed price undertaking. In this context, the companies proposed that the minimum import prices (MIPs) are indexed regularly in relation to the fluctuations of the prices of rapeseed oil. Moreover, they offered MIPs for three types to take account of the product variety upon importation (biodiesel obtained from soybean, palm or canola oil) on the basis of the feedstock coefficients established during the IP.
- (191) In relation to the offers of the co-operating exporting producers it is noted that the basis to establish an indexed MIP was on average between 7-8 % lower than the non injurious price established during the IP. Moreover, the proposed coefficients to arrive at adjusted MIPs for the types mentioned above were inappropriate as they related to the IP. Indeed, in view of the fact that these coefficients, which depend on the difference in price between the feedstock, continuously fluctuate, these coefficients may have considerably changed in relation to the situation observed during the IP. Therefore, the proposed indexation of MIPs for soybean biodiesel or palm oil biodiesel on the basis of price fluctuations of the rapeseed oil was considered inappropriate as it would be based on the evolution of prices of raw material different to the ones used for the production of the exported product concerned.
- (192) On the basis of the above, and without referring to any further company specific practical issues regarding their acceptance, it was considered that the undertakings had to be rejected as the method to determine the MIPs was inappropriate and that the offered MIPs were not at levels that would eliminate the injurious subsidisation.

8.4. Definitive collection of provisional duties and special monitoring

- (193) Subsequent to the disclosure of final findings, the complainant requested special measures to prevent possible circumvention of the measures in view of the fact that the market concerned is a global commodity market with a fungible product commercialised through various sales channels.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, Belgium.

(194) In consideration of the above, it is indeed considered appropriate to monitor closely the imports of biodiesel from all destinations, with a view of facilitating swift appropriate action should the situation so require.

(195) In view of the magnitude of the subsidy margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional countervailing duty, imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of countervailing duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed 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, currently 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.

2. The rate of the definitive countervailing duty applicable to the products described in paragraph 1 and manufactured by the companies below shall be:

Company	Countervailing duty rate Euro per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	237,0	A933
Cargill Inc., Wayzata	213,8	A934
Green Earth Fuels of Houston LLC, Houston	213,4	A935
Imperium Renewables Inc., Seattle	216,8	A936
Peter Cremer North America LP, Cincinnati	211,2	A937
Vinmar Overseas Limited, Houston	211,2	A938
World Energy Alternatives LLC, Boston	211,2	A939
Companies listed in the Annex	219,4	see Annex
All other companies	237,0	A999

The countervailing duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional countervailing duties pursuant to Commission Regulation (EC) No 194/2009 on imports of biodiesel 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 shall be definitively collected. The amounts secured in excess of the amount of the definitive countervailing duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 July 2009.

For the Council
The President
A. BORG

ANNEX

US co-operating exporting producers not sampled

Company Name	City	TARIC additional code
AC & S Inc.	Nitro	A941
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
American Made Fuels, Inc.	Canton	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
BioPur Inc.	Bethlehem	A941
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels LLC	Tulsa	A940
ED&F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels Inc.	Madison	A940
Freedom Fuels LLC	Mason City	A941
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel LP (BioSelect Fuels)	Houston	A940
GeoGreen Fuels LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents Inc.	Salt Lake City	A940

Company Name	City	TARIC additional code
Incobrasa Industries Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels Inc.	Newark	A940
Integrity Biofuels	Morristown	A941
Iowa Renewable Energy LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries LLC	Claypool	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
Natural Biodiesel Plant LLC	Hayti	A941
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels Ltd.	Houston	A940
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Piedmont Biofuels Industrial LLC	Pittsboro	A941
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
Prairie Pride	Deerfield	A941
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Seminole Biodiesel	Bainbridge	A940

Company Name	City	TARIC additional code
Southeast BioDiesel LLC	Charlotte	A941
Soy Solutions	Milford	A940
SoyMor Biodiesel LLC	Albert Lea	A940
Stepan Company	Northfield	A941
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940
U.S. Biofuels Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel LLC	Farley	A940
Western Iowa Energy LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940
Yokaya Biofuels Inc.	Ukiah	A941

II

(Non-legislative acts)

REGULATIONS

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

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:

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 transshipment 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 transshipment of the product concerned via Canada and Singapore.

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

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 67, 12.3.2009, p. 50.

⁽³⁾ OJ L 179, 10.7.2009, p. 1.

⁽⁴⁾ OJ L 179, 10.7.2009, p. 26.

- (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 ⁽¹⁾ (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 ⁽²⁾ 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.

⁽¹⁾ OJ L 211, 12.8.2010, p. 6.

⁽²⁾ OJ L 211, 12.8.2010, p. 1.

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 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 transshipment 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	0,00 %
Canada	1 725	0,10 %	140 043	8,19 %	197 772	9,28 %
Singapore	179	0,01 %	20 486	1,20 %	32 078	1,50 %

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
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.
- (27) According the USA statistics, exports of biodiesel from the USA to Canada increased from 967 tonnes in 2008 to 128 233 tonnes in 2009 and 161 841 tonnes during the IP.
- (28) A comparison of the export statistics provided by the US authorities with the import statistics provided on-spot by the Canadian authorities showed significant discrepancies on a monthly basis. According to the Canadian statistics, imports of US biodiesel increased from 11 757 tonnes in 2008 to 18 673 tonnes in 2009 and 174 574 tonnes during the IP.

- (29) According to the Canadian authorities, there is no specific code to declare biodiesel. They noted that Canada and the USA exchange import data for use as their respective export data. As such, at the six-digit level Canadian import data and US export data should match, which they do quite closely under HTS 38.24.90. However, beyond six digits they each have their own classification systems. Also it should be noted that the Canadian statistics only cover imports which have been customs cleared in Canada and not transhipped goods.

- (30) In conclusion, despite the discrepancies between the two data sources, it is clear that US export of biodiesel to Canada increased from 2008 to the IP, and in particular following the imposition of countervailing measures. The Canadian biodiesel market is currently not able to absorb such quantities of biodiesel. Genuine Canadian biodiesel producers are in fact export oriented.

4.2.3. Production in Canada and sales of genuine Canadian biodiesel to the Union

- (31) The two cooperating producers in Canada did not purchase any biodiesel from the USA or from any other sources during the IP.
- (32) Production of biodiesel in Canada is an infant industry. Some six production facilities were in place during the IP, but the two facilities in Eastern Canada, which are in fact owned and run by the two cooperating producers, alone account for approximately 90 % of total production.
- (33) From the production volumes sold by the cooperating producers, sales where end-customers were certainly in North America, i.e. in the USA or Canada were determined. The remainder of the sales were sold to customers who either traded the goods and/or blended the goods with other biodiesel. The two companies did not know whether the customers sold the products to the Union as Canadian biodiesel, whether they blended it, or whether the biodiesel was sold to end customers in the USA or in Canada.
- (34) Even if in an extreme case it was assumed that all genuine Canadian biodiesel ended up in the Union, this would account for only 20 % of total imports into the Union from Canada during the IP.

4.3. Conclusion on the change in the pattern of trade

- (35) The reconciliation of statistics with the data obtained from the cooperating producers showed that Canadian biodiesel producers could not have produced the volume exported from Canada into the Union. This therefore strongly suggests that the surge of imports from Canada into the Union relates to exports of US biodiesel consigned from Canada.

- (36) The overall decrease of US exports to the Union as from 2008 and the parallel increase of exports from Canada to the Union and of exports from the USA to Canada after the imposition of the original measures can thus be considered as a change in the pattern of trade.

4.4. Insufficient due cause or economic justification other than the imposition of the countervailing duty

- (37) The investigation did not bring to light any other due cause or economic justification for the transshipment than the avoidance of the payment of the countervailing duty in force on biodiesel originating in the USA.

4.5. Undermining the remedial effect of the countervailing duty

- (38) Eurostat data was used to assess whether the imported products had, in terms of quantities, undermined the remedial effects of the countervailing measures in force on imports of biodiesel from the USA. The quantities and prices of exports from Canada were compared with the injury elimination level established in the original investigation.
- (39) As mentioned above, imports from Canada into the Union increased from 1 725 tonnes in 2008 to 197 772 tonnes during the IP, the latter representing a share of imports of 9,2 %. The increase of imports from Canada could not be considered to be insignificant bearing in mind the size of the Union market as determined in the original investigation. Considering the non-injurious price level established in the original investigation, Canadian imports into the Union during the IP showed underselling in the region of 50 %, while undercutting the Union producers' sales prices by approximately 40 %.
- (40) It was therefore concluded that the measures are being undermined in terms of quantities and prices.

4.6. Evidence of subsidisation

- (41) Regarding subsidisation, it should be noted that the US biodiesel tax credit, the main subsidy scheme found in the original investigation, was retroactively reinstated in December 2010. On this basis, it is concluded that the imported like product still benefited from subsidies during the IP.

4.7. Conclusion

- (42) The investigation concluded that the definitive countervailing duties imposed on imports of biodiesel originating in the USA were circumvented by transshipment via Canada pursuant to Article 23 of the basic Regulation.

5. SINGAPORE

- (43) Two traders located in Singapore cooperated with the investigation. In addition, cooperation was received from the relevant authorities of the Government of Singapore.
- (44) The criteria for the assessment of the existence of circumvention have been described in recital 23 above.
- (45) According to Eurostat figures total exports of biodiesel from Singapore to the Union increased from 179 tonnes in 2008 to 20 486 tonnes in 2009 and to 32 078 tonnes during the IP. Exports from the USA to Singapore have also increased over the same period.
- (46) According to the relevant authorities of the Government of Singapore the biodiesel produced locally is sold mostly within Singapore to cater to domestic demand. However, they do note a growing industry in Singapore with the recent construction of new production facilities.
- (47) Exports from Singapore have traditionally been low. Imports of biodiesel into the Union were closely examined in the Article 14(6) database and checked with the relevant national customs authorities. It appears that imports have arrived in a few spikes. The analysis showed that the majority of these imports were genuine Singaporean origin. However, not all imports could be accounted for.
- (48) Compared to the Union consumption established in the original investigation the import volumes from Singapore to the Union which could not be accounted for were found to be extremely low. Furthermore, their share of Union consumption, taking account of EBB's estimation of the considerable increase in Union consumption since the original investigation, would be negligible.
- (49) In view of the above, it can be concluded that the remedial effects of the countervailing measures have not been undermined in terms of quantities from Singapore.
- (50) Regarding transshipment, it is well-known that Singapore is a huge shipping hub in Asia where regional ships arrive and unload goods which are later reloaded to ships sailing, among others, to Europe. In this investigation, one of the cooperating traders transhipped biodiesel with Malaysian or Indonesian origin through Singapore with a final destination in the Union. During the IP, this trader alone exported a significant quantity of biodiesel to the Union via transshipment in Singapore and customs cleared the biodiesel in the Union as Malaysian or Indonesian origin. The verification did not reveal indications to put in question the declared Indonesian or Malaysian origin.

- (51) In the light of the above, the investigation concerning the possible circumvention of countervailing measures by imports of biodiesel consigned from Singapore should be terminated.

6. USA

6.1. Preliminary remarks

- (52) Five US producers of biodiesel or biodiesel blends cooperated in the investigation, three of which were included in the sample of the original investigation. The US Government cooperated by providing exports statistics and their interpretation of the statistics.
- (53) All three producers which were included in the sample in the original investigation had stopped exporting biodiesel after the imposition of definitive measures.
- (54) Only one of the five cooperating companies, BP North America which did not cooperate in the original investigation, exported biodiesel blends containing by weight 20 % or less of biodiesel ('B20 and below') to the Union during the IP.
- (55) The National Biodiesel Board ('NBB') which represents the US biodiesel industry argued that a product which was according to them explicitly found to be outside of the product scope of the existing measures cannot become subject to countervailing measures without a *de novo* anti-subsidy investigation. NBB argued that the definitive Regulation in explicit terms established the 'product concerned' and 'like product' at the level of biodiesel or biodiesel in blends with biodiesel representing more than 20 %. According to NBB, this was not an artificial threshold but corresponded to the market reality found during the original investigation. It was, e.g. found that the threshold of 20 % was appropriate to allow a clear distinction between the various types of blends which were available on the US market.
- (56) In the view of NBB and other interested parties, an anti-circumvention investigation can only extend countervailing measures on a product concerned to a like product that is only a slightly modified product compared to the product concerned. Again, NBB argued that the Council itself in the definitive Regulation had established that biodiesel in blends with a volume of biodiesel of 20 % or less is not a like product. Therefore, according to NBB, in the structure of the provisions of the basic Regulation there is no other option but to initiate a new investigation in order to determine whether these blends should become subject to measures.
- (57) In reply to these arguments, it should first of all be noted that the purpose of the anti-circumvention provisions in Article 23 of the basic Regulation is to counteract any alleged attempts to evade the measures in force. If sufficient *prima facie* evidence exists showing that circumvention is taking place within the meaning of

Article 23(3) of the basic Regulation, the Commission will initiate an investigation in order to determine whether circumvention takes place. In accordance with Article 23(3) of the basic Regulation, the assessment of the existence of circumvention should be made, e.g. by analysing successively whether there was a change in the pattern of trade between USA 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 and 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.

- (58) It should also be recalled that an anti-circumvention investigation is not a review of the product scope based on Article 19 of the basic Regulation and does not change the definition of the product concerned and the like product. The provisions under Article 23 of the basic Regulation provide for the relevant legal basis for an investigation of whether there is circumvention with regard to a product subject to measures.
- (59) In this respect, the request the Commission received pursuant to Article 23(4) of the basic Regulation alleged that following the imposition of the measures, exports of biodiesel in blends containing 20 % or less 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 and the like product. The investigation examined whether such practice could be considered as circumvention pursuant to the provisions of Article 23 of the basic Regulation. Finally, it should be noted that alleged circumvention practices can only be examined under Article 23 of the basic Regulation.

6.2. Exports of B20 and below from the USA to the Union

- (60) As mentioned above in recital 20, the US HTS code 3824 90 40 00 contains also blends with a biodiesel content of 96,5 % and below. According to the US export statistics a total quantity of 358 291 tonnes of this type of blend was exported to the Union during the IP.
- (61) BP Products North America ('BPNA') during the IP exported a significant proportion of the above-mentioned quantity.
- (62) BPNA did not participate in the original investigation because it started up its biodiesel activities only in the beginning of 2009 in anticipation of a growing biodiesel market in the future, in response to government mandates both in the USA and abroad. BPNA started to export to the Union in December 2009. In this respect it is recalled that definitive measures were imposed in July 2009.

(63) In the Union, BP sold US origin biodiesel blend containing by weight 15 % or less of biodiesel ('B15') in the UK, France and the Netherlands. In all cases, the product is further blended in order to respect the relevant legislation in force in certain Member States to promote the consumption of biofuels at the pump because they are currently considered environmentally sustainable.

(64) BPNA argued that blends less than 15 % are not a like product for the product concerned. The characteristics and market realities are very different. The logistics involved (including shipping restrictions) in the production and importing of lower blends are very different to those of higher grades. According to BPNA, when transporting blends less than 15 %, such products are classified as a petroleum product for shipping as opposed to a chemical product which makes the shipment less costly. BPNA also argued that there are differences in performance between higher and lower grade biodiesel blends when used in diesel engines.

(65) The objective of a circumvention investigation is to establish whether biodiesel in a blend containing by weight 20 % or less of biodiesel has circumvented the measures in force. It may well be the case that lower blends attract lower shipping costs. However, it should be noted that a blend of B20 and below is effectively only a different composition of the blend, in comparison to the process of producing biodiesel in a blend above B20. It is a simple process to change the composition of a blend. Putting into existence B20 and below is considered to be merely a slight modification of the product concerned, the only difference being the biodiesel proportion in the blend. It should also be noted that the product concerned as well as B20 and below ultimately are destined for the same uses in the Union. Furthermore, biodiesel in blends of B20 and below as well as biodiesel in blends above B20 have the same essential characteristics.

6.3. Change in patterns of trade

(66) Imports of the product concerned 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.

(67) In this regard, it should be noted that though there was mandatory blending of, e.g. B5 in the Union during the original investigation, exports of B20 and below from the USA to the Union only came into existence following the imposition of definitive measures. During the original investigation, mainly exports of B99,9 were exported to the Union according to the data obtained from the

sampled cooperating exporting producers. The reason for this was that it maximised the subsidy on the exported goods (USD 1 biodiesel tax credit per gallon).

(68) It is therefore difficult to see what the economic justification would be for starting to export B20 and below other than the avoidance of the countervailing measures in place.

(69) The proportion of biodiesel in the blend is still subsidised and the importer avoids the payment of the countervailing duty due. In this respect, it should be noted that the countervailing duty on blends is applicable in proportion to the biodiesel in the blend, i.e. in the case of imports of B15 the countervailing duty not paid would be up to around EUR 35 per tonne.

6.4. Insufficient due cause or economic justification other than the imposition of the countervailing duty

(70) According to BNPA, the creation of less than B15 biodiesel was not created specifically to avoid duties. The company argued that it did not participate in the original investigation because it started up its biodiesel activities beginning of 2009 in anticipation of a future active biodiesel market in response to government mandates, both in the USA and abroad. The specific structure of the company, its activity as a petroleum company and its logistic presence in the USA, made blending in the USA and exporting to the Union a logical commercial decision. The blend exported was always B15 and below, because of the less stringent security measures: up to B15 the blend is not considered a chemical product according to maritime regulations.

(71) It is noted that this company's activity in regard to exports to the Union only started after the imposition of measures. It is considered that there is insufficient due cause or economic justification other than the avoidance of the payment of the countervailing duty in force on biodiesel originating in the USA.

6.5. Undermining the remedial effect of the countervailing duty

(72) Considering the non-injurious price level of the original investigation, US imports of B20 and below into the Union during the IP showed both undercutting and underselling. The imports of B20 and below only came into existence following the imposition of definitive measures and the quantities involved are not insignificant.

- (73) It was therefore concluded that the measures are being undermined in terms of quantities and prices.

6.6. Evidence of subsidisation

- (74) Regarding subsidisation, it should be noted that the US biodiesel tax credit, the main subsidy scheme found in the original investigation, was retroactively reinstated in December 2010. On this basis, it is concluded that the imported like product still benefited from subsidies during the IP.

6.7. Conclusion

- (75) The investigation concluded that the definitive countervailing duties imposed on imports of biodiesel originating in the USA were circumvented by imports into the Union of biodiesel in a blend containing by weight 20 % or less of biodiesel.
- (76) It was concluded that the only economic justification for exporting blends of B20 and below was prompted by the subsidisation in the USA on the one hand, and the avoidance of paying any countervailing duties when importing into the Union on the other hand.
- (77) BPNA requested an exemption from the possible extended measures. However, as the investigation clearly showed that imports of B20 and below were only done in order to circumvent the measures in force, such exemption cannot be granted. Pursuant to the provisions of Article 23(6) of the basic Regulation, exemptions may be granted to producers of the product concerned who can show that they are not related to any producer subject to measures and that they are found not to be engaged in circumvention practices. In these investigations, it was found that BPNA is involved in the circumvention practices by starting to export B20 and below after the imposition of anti-dumping and countervailing measures without sufficient due cause or economic justification other than the imposition of the measures. Moreover, there is evidence that the effects of the measures are being undermined in terms of prices and quantities, and the imported product is still being subsidised.
- (78) Some biodiesel producers cooperating in the original investigations requested exemptions from any extended measures due to circumvention. It was found that these US producers did not produce or sell B20 and below. Pursuant to Article 23(6) of the basic Regulation, only producers' request for exemption can be considered in the course of an anti-circumvention investigation. However, it should be noted that Article 23 of the basic Regulation contains new-comer provisions.

7. MEASURES

7.1. Canada

- (79) Given the above, it was concluded that the definitive countervailing duty imposed on imports of biodiesel

originating in the USA was circumvented by transshipment via Canada pursuant to Article 23 of the basic Regulation.

- (80) In accordance with the first sentence of Article 23(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the USA, should be therefore extended to imports of the same product consigned from Canada, whether declared as originating in Canada or not.
- (81) In order to avoid evasion of the duty by unverifiable allegations that the product transhipped through Canada has been produced by a company subject to an individual duty in the definitive Regulation, the measure to be extended should be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 598/2009, which is a definitive countervailing duty of EUR 237 per tonne.
- (82) The countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).
- (83) In accordance with Articles 23(4) and 24(5) of the basic Regulation, which provide that any extended measure shall apply to imports which entered the Union under registration imposed by the initiation Regulation, duties should be collected on those registered imports of biodiesel consigned from Canada.

7.2. USA

- (84) Given the above, it was concluded that the definitive countervailing duty imposed on imports of biodiesel originating in the USA was circumvented by imports into the Union of B20 and below pursuant to Article 23 of the basic Regulation.
- (85) In accordance with the first sentence of Article 23(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the USA should therefore be extended to imports of B20 and below.
- (86) The measures to be extended should be those established in Article 1(2) of Regulation (EC) No 598/2009.
- (87) The extended countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

- (88) In accordance with Articles 23(4) and 24(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiation Regulation, duties should be collected on those registered imports of B20 and below originating in the USA.

8. TERMINATION OF THE INVESTIGATION AGAINST SINGAPORE

- (89) In view of the findings regarding Singapore, the investigation concerning the possible circumvention of countervailing measures by imports of biodiesel consigned from Singapore should be terminated and the registration of imports of biodiesel consigned from Singapore, introduced by the initiation Regulation, should be discontinued.

9. REQUEST FOR EXEMPTION

- (90) The two cooperating companies in Canada submitting a questionnaire reply requested an exemption from the possible extended measures in accordance with Article 23(6) of the basic Regulation.
- (91) It was found that the two cooperating Canadian producers were not engaged in the circumvention practices which are subject of this investigation. Furthermore, these producers could demonstrate that they are not related to any of US producers/exporters of biodiesel. Therefore, their requests for exemption can be granted.
- (92) It is considered that special measures are needed in this case in order to ensure the proper application of such exemptions. These special measures consist in the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the extended countervailing duty.
- (93) One cooperating party in the USA that submitted a questionnaire reply also requested an exemption from the possible extended measures in accordance with Article 23(6) of the basic Regulation.
- (94) As explained in recital 77 above, the investigation clearly showed that this party was engaged in the circumvention practices by importing B20 and below. Consequently, such exemption cannot be granted.
- (95) However, it should be underlined that, should any exporting producer(s) concerned not be availing from subsidisation anymore, such parties can request a review pursuant to Article 19 of the basic Regulation.

10. DISCLOSURE

- (96) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive countervailing duty imposed by Regulation (EC) No 598/2009 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, originating in the United States of America, is hereby extended to imports into the Union 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, consigned from Canada, whether declared as originating in Canada or not, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 41 (TARIC code 2710 19 41 21), ex 3824 90 91 (TARIC code 3824 90 91 10) and ex 3824 90 97 (TARIC code 3824 90 97 01), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 598/2009, which is a definitive countervailing duty of EUR 237 per tonne net.

The countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of exemptions granted to the companies mentioned in paragraph 1 or authorised by the Commission in accordance with Article 4(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the countervailing duty as imposed by paragraph 1 shall apply.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Canada, whether declared as originating in Canada or not, registered in accordance with Article 2 of Regulation (EU) No 721/2010 and Articles 23(4) and 24(5) of Regulation (EC) No 597/2009, with the exception of those produced by the companies listed in paragraph 1.

4. The provisions in force concerning customs duties shall apply.

Article 2

1. The definitive countervailing duty imposed by Regulation (EC) No 598/2009 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, originating in the United States of America, is hereby extended to imports into the Union 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, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 41 (TARIC code 2710 19 41 30) and ex 3824 90 97 (TARIC code 3824 90 97 04).

The duties to be extended shall be those established in Article 1(2) of Regulation (EC) No 598/2009.

The countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The duties extended by paragraph 1 of this Article shall be collected on imports originating in the United States of America, registered in accordance with Article 2 of Regulation (EU) No 721/2010 and Articles 23(4) and 24(5) of Regulation (EC) No 597/2009.

3. The provisions in force concerning customs duties shall apply.

Article 3

The investigation initiated by Regulation (EU) No 721/2010 concerning the possible circumvention of countervailing measures imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Singapore, whether declared as originating in Singapore or not, and making such imports subject to registration, is hereby terminated.

Article 4

1. Requests for exemption from the duty extended by Article 1(1) and Article 2(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/92
1049 Brussels
BELGIUM

Fax + 32 22956505

2. In accordance with Article 23(6) of Regulation (EC) No 597/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Regulation (EC) No 598/2009, from the duty extended by Article 1(1) and Article 2(1).

Article 5

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 721/2010.

Article 6

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 May 2011.

For the Council
The President
MARTONYI J.

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(2):

1. The name and the function of the official of the entity issuing the commercial invoice.
2. The following declaration: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'
3. Date and signature.

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**

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⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 1).

⁽³⁾ 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 (OJ L 122, 11.5.2011, p. 1).

⁽⁴⁾ Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ L 315, 26.11.2013, p. 2).

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.

⁽⁵⁾ Notice of the impending expiry of certain countervailing measures (OJ C 289, 4.10.2013, p. 11).

⁽⁶⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁽⁷⁾ OJ C 217, 10.7.2014, p. 25.

⁽⁸⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of biodiesel originating in the United States of America (OJ C 217, 10.7.2014, p. 14).

(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 analysed on a broader basis. The US Government refers to the WTO Appellate 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 not 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
- Verbio Vereinigte BioEnergie AG, Leipzig, Germany

1.9. Disclosure

- (30) On 3 June 2015, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to maintain the anti-subsidy measures in force and invited all interested parties to comment. The Commission considered the comments made by the interested parties and took them into account, where appropriate.
- (31) Following final disclosure NBB requested and was granted a hearing with the Hearing Officer in trade proceedings.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (32) The product under review is the same as in the investigation leading to the imposition of the existing measures ('the original investigation'), i.e. 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, originating in the United States of America ('the product under review'), currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 92, ex 3826 00 10 and ex 3826 00 90.
- (33) Biodiesel is a renewable fuel used in the transport sector for diesel engines. However conventional engines cannot function with pure biodiesel but a blend of mineral diesel and a limited content of biodiesel.
- (34) Biodiesel produced in the USA is predominantly 'Fatty Acid Methyl Ester' (FAME) derived from a wide range of vegetable oils (soybean oil, palm oil, rapeseed oil) and used frying oils, animal fats or biomass which serve as a biodiesel feedstock. The term 'ester' refers to the trans-esterification of vegetable oils, namely, the mingling of the oil with alcohol. The term 'methyl' refers to methanol; the most commonly used alcohol in the process, although ethanol can also be used in the production process, resulting in 'fatty acid ethyl esters'.
- (35) All types of biodiesel and the biodiesel in the blends, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product under investigation do not alter its basic definition, its characteristics or the perception that various parties have of it. In particular, from the perspective of the end-user of diesel fuel, it makes no difference if the blend available at the pump is made of one particular biodiesel feedstock.

2.2. Like product

- (36) As in the original investigation, the biodiesel sold on the domestic market in the USA and the US biodiesel sold for export has the same basic physical and technical characteristics and uses. Similarly, the biodiesel produced and sold in the Union by the Union industry has the same basic physical and technical characteristics and uses the product exported from the USA to the Union. Therefore, they are like products for the purposes of the present investigation within the meaning of Article 2(c) of the basic Regulation.

2.3. Claims regarding product scope

- (37) The US Government claimed that diesel produced from biomass ⁽⁹⁾ is a category of products broader than the product under review. However, as set out in the Regulation imposing provisional countervailing duties in the original investigation ⁽¹⁰⁾, all types of biodiesel and biodiesel blends, including diesel produced from biomass, are considered to be biodiesel fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels. The reason is that biodiesel produced from biomass has the same or very similar basic physical and technical characteristics and uses as biodiesel produced from other sources. The finding in the original investigation was not challenged by any interested party and remains valid in this expiry review. Consequently, the Commission rejected this claim by the US Government.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF SUBSIDIES

3.1. Preliminary remarks

- (38) In accordance with Article 18(1) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of subsidisation. The notion of recurrence implies that a subsidy does not have to be in force at the time of initiation or when the decision to maintain the measures is taken. Consequently, the Commission also verified whether subsidies which have expired after the RIP are likely to recur.
- (39) The Commission analysed all subsidy schemes identified in the review request and asked the authorities of the USA to provide information on any other possible subsidy schemes. On the basis of the information contained in the reply to the Commission's questionnaire by the authorities of the USA, the Commission analysed the following schemes which were in force during the RIP:

Federal Schemes

- (a) Biodiesel mixture credit and biodiesel credit
- (b) Small agri-biodiesel producer income tax credit
- (c) Credit for production of cellulosic biofuel
- (d) USDA bioenergy programme for advanced biofuels

State Schemes

- (a) Florida: Florida Biofuels Investment Tax Credit
- (b) Iowa: Iowa Biodiesel Producer Tax Refund
- (c) Kansas: Kansas Qualified Biodiesel Fuel Producer Incentive
- (d) Kentucky: Kentucky Biodiesel Production Tax Credit

⁽⁹⁾ Under US legislation, 26 U.S. Code, section 45K(c)(3), the term 'biomass' means any organic material other than— (A) oil and natural gas (or any product thereof), and (B) coal (including lignite) or any product thereof.

⁽¹⁰⁾ Commission Regulation (EC) No 194/2009 of 11 March 2009 imposing provisional countervailing duty on imports of biodiesel originating in the United States of America, OJ L 67, 12.3.2009, p. 50, recital 20, footnote 5.

- (40) The following schemes will not be analysed hereinafter since, on the basis of the information provided by the authorities of the USA, they were either inactive, had expired before the RIP or did not provide any benefits to US biodiesel producers during the RIP:

Federal Scheme

Advanced biofuels loan guarantees

State Schemes

- (i) Alabama Biofuel Production Facility Tax Credit
- (ii) Arkansas Alternative Fuel Grants and Rebates
- (iii) Illinois Renewable Fuels Development Programme
- (iv) Indiana Biodiesel Production Tax Credit
- (v) Kentucky Alternative Fuel Production Tax Incentives
- (vi) Louisiana Biodiesel Equipment and Fuel Tax Exemption
- (vii) Maine Biofuels Production Tax Credit
- (viii) Maryland Biofuels Production Incentive
- (ix) Mississippi Biofuels Production Incentive
- (x) Missouri qualified biodiesel producer incentive fund
- (xi) Montana Alternative Fuel Production Property Tax Incentive
- (xii) Montana Biodiesel Production Facility Tax Credit
- (xiii) Nebraska Biodiesel Production Investment Tax Credit
- (xiv) New York Biofuel Production Tax Credit
- (xv) South Carolina Credit for Biodiesel Facilities
- (xvi) Texas fuel and biodiesel production incentive program
- (xvii) Virginia Biofuels Production Grants
- (xviii) Washington Alternative Fuel Loans and Grants
- (xix) Washington State biofuels production tax exemption

3.2. Subsidisation of imports during the RIP — Federal Schemes

3.2.1. Biodiesel mixture credit and biodiesel credit

3.2.1.1. Legal basis

- (41) Title 26, Section 40A and sections 6426 and 6427 of the US Code (U.S.C.) are the legal basis for a tax credit scheme for biodiesel blenders, retailers and end-users. They provide for the following biodiesel fuel credits:
- (i) the biodiesel mixture credit ('USD 1/gallon scheme');
 - (ii) the biodiesel credit;
 - (iii) the small agri-biodiesel producer credit.
- (42) The small agri-biodiesel producer income tax credit is a tax credit which applies only to small agri-biodiesel producers. This scheme is dealt with in recitals (59) to (63) below.

3.2.1.2. Eligibility

- (43) In order to be eligible for the biodiesel mixture credit referred to under (i) in recital (41) above, a company must create a mixture of biodiesel and diesel fuel, which mixture is sold as a fuel or for use as a fuel.
- (44) The person claiming the incentive must obtain a certification from the producer or importer of the biodiesel that identifies the product and the percentage of biodiesel and agri-biodiesel ⁽¹⁾ in the product. This credit takes the form of an excise tax credit or, if a company's excise tax liability is less than the total excise tax credit, the company may then claim the residual credit as a refundable income tax credit. A refundable income tax credit is a credit against the taxpayer's income taxes or a direct payment. It is refundable because the excess credit can be disbursed to the taxpayer as a direct cash payment if the credit is greater than the individual's tax liability.
- (45) The biodiesel credit referred to under (ii) in recital (41) above is a non-refundable income tax credit for retailers or end-users of neat (pure) biodiesel. The neat biodiesel credit is available only to the person who places the gallon of neat biodiesel into the fuel tank of a vehicle or uses it as fuel. It should be noted that also biodiesel producers, producing their own biodiesel, would be able to receive this credit. Thus to claim the credit, the biodiesel producer must be acting as either a retailer (putting the gallon of biodiesel into the end-user's gas tank) or an end-user (e.g. putting the biodiesel into his own vehicles).

3.2.1.3. Practical implementation

- (46) Biodiesel that is mixed with mineral diesel fuel is entitled to a biodiesel mixture excise tax or income tax credit. During the RIP, the credit prevailing was USD 1 per gallon for all types of biodiesel, i.e. including agri-biodiesel and diesel from biomass.
- (47) The final tax credit for the blended fuel depends on the proportion of biodiesel it contains. The minimum requirement, and what is the most common practice, is to add 0,1 % mineral diesel to 99,9 % biodiesel (this blended product is referred to as B99 in the USA), as this ensures that the maximum tax credit is obtained. The proportion of biodiesel in a blended product qualifies for the tax credit (e.g. 100 gallons of B99 will contain

⁽¹⁾ As defined by the USC, agri-biodiesel is biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, cramble, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

99,9 gallons of biodiesel and be eligible for a tax credit of USD 99,90). The conversion of biodiesel from a pure product (B100) to a mixed product (B99) is a simple process. It implies the addition of 0,1 % of mineral diesel into pure biodiesel and does not entail a major transformation of the product concerned. It is the activity of blending that triggers the eligibility for the credit.

- (48) The producers of biodiesel can claim the incentive when they are themselves performing a blending activity. The producer must blend the neat biodiesel with mineral diesel fuel. In terms of entitlement to the incentive, there are no differences between blended biodiesel destined for domestic sale and sale for export.
- (49) Companies that do not produce but rather purchase pure biodiesel and blend it into a biodiesel mixture are also entitled to the tax credit. Such companies must obtain a certificate from the producer or the importer (and if applicable any intervening resellers) of the biodiesel in which the producer effectively certifies not to have claimed the tax credit. This certificate is transferable entitling the holder to a USD 1 per neat biodiesel gallon tax credit.
- (50) The incentive can be claimed either as a credit against excise or income tax liability or as a direct cash payment. The total amount of the incentive remains the same (USD 1 per gallon) whether the incentive is claimed as an excise tax credit, an income tax credit, a direct payment to the taxpayer, or any combination of the foregoing.
- (51) The U.S.C. provides that the biodiesel mixture credit will not be granted unless the company (blender) that makes the mixture of biodiesel and mineral diesel obtains a certificate ('Certificate for Biodiesel') from the producer of the biodiesel in which the producer certifies, inter alia, the quantity of biodiesel to which the certificate relates and whether the biodiesel is agri-biodiesel or biodiesel other than agri-biodiesel. If a company that produces biodiesel subsequently blends that biodiesel with mineral diesel and claims the tax credit, that company will provide the Certificate for Biodiesel with the required documentation to make a claim for credit. A person that receives a Certificate for Biodiesel, and subsequently sells the biodiesel without producing a biodiesel mixture, is to provide the Certificate for Biodiesel to the purchaser as well as providing a 'statement of biodiesel reseller'. In other words, the company that blends the mixture and claims the tax credit may obtain the Certificate for Biodiesel either directly from the producer of the biodiesel or indirectly from a biodiesel reseller. Thus, this certificate is transferable entitling the holder to a USD 1 per gallon tax credit for the number of gallons of biodiesel used by the claimant in producing any biodiesel mixture.
- (52) No new information during the review period became available that would question the conclusion from the initial investigation that all biodiesel is subsidized through this tax credit.
- (53) In regard to the biodiesel credit, by contrast to the previous investigation when the prevailing credit was USD 1 per gallon of unmixed (neat) agri-biodiesel, or USD 0,50 for each gallon of other unmixed biodiesel, the retailer (or a biodiesel producer acting as a retailer) or end user of unblended biodiesel can now claim USD 1,00 per gallon for unmixed (neat) agri-biodiesel or other types of biodiesel as well as diesel produced from biomass as a non-refundable general business income tax credit. A non-refundable general business credit is a credit against the business's income tax. It is non-refundable because, if the business's credits are greater than its tax liability, the excess credit cannot be disbursed to the business as a direct cash payment. However, according to the information provided by the US authorities, business income tax credit granted for one year can be carried back two years and carried forward for 20 years.
- (54) The US authorities acknowledged that some biodiesel producers must have benefited from this credit during the RIP acting as retailers or users, but were unable to quantify the exact benefits received by them during the RIP.

3.2.1.4. Conclusion

- (55) The biodiesel mixture credit as well as the biodiesel credit have to be regarded as a fiscal incentive whether or not they are given as a cash payment (only possible for biodiesel mixture credit) or has to be offset against tax liabilities (applicable to both tax credits).

- (56) The Commission considers the schemes to be a subsidy in the sense of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the United States of America in the form of direct grants (cash payments, only possible for the biodiesel mixture credit) and revenue foregone which is otherwise due (tax offset) (applicable to both tax credits). The incentives confer a benefit on the companies receiving them.
- (57) The schemes are limited to companies that are involved in the biodiesel industry and are therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.
- (58) Finally, as the biodiesel mixture credit scheme provides for a subsidy of USD 1 per gallon for all types of biodiesel, the Commission considers that this scheme provided significant amount of subsidies to the US biodiesel exporting producers and thus remained by far the most important scheme during the RIP.

3.2.2. *Small agri-biodiesel producer income tax credit*

3.2.2.1. Legal basis

- (59) Title 26, U.S.C., Section 40A also provides for a small agri-biodiesel producer income tax credit.

3.2.2.2. Eligibility

- (60) This scheme is only available to small producers of neat agri-biodiesel. Any mixer, blender, or trader who purchases but does not produce biodiesel is not eligible for the credit. A small producer is any person whose production capacity is not more than 60 million gallons of agri-biodiesel per year. The small agri-biodiesel producer can claim a USD 0,10 non-refundable general business income tax credit for each gallon of agri-biodiesel produced. The qualified production of a producer may not exceed 15 million gallons in any taxable year. For the producer to claim the credit, the agri-biodiesel must be used as a fuel, sold for use as a fuel, or used to create a mixture of biodiesel and diesel fuel that is used as a fuel or sold for use as a fuel. Thus small agri-biodiesel producers can combine this scheme with the biodiesel mixture credit scheme and thus receive altogether USD 1,10 per gallon. By contrast, big agri-biodiesel producers are eligible only for the biodiesel mixture credit scheme.

3.2.2.3. Practical implementation

- (61) Claims for the non-refundable general business income tax credits are made annually when the claimant is making its income tax return. The credit for each gallon of biodiesel produced by the claimant during the relevant tax year, up to a maximum of 15 million gallons, is offset against the claimant's liability for corporate income tax. If the claimant's tax liability is less than the amount of credit claimed, the excess amount can be carried forward to subsequent tax years.

3.2.2.4. Conclusion

- (62) The Commission considers 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 Government of the United States of America in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.
- (63) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.2.3. Bioenergy programme for advanced biofuel (BPAB)

3.2.3.1. Legal basis

- (64) The US Department of Agriculture ('USDA') Bioenergy programme for advanced biofuel (BPAB) is governed by Title IX, Section 9005 of the Farm Security and Rural Investment Act of 2002 (the '2002 Farm Bill'). The programme was scheduled to expire in 2012, but was extended in 2013 and subsequently in 2014. The Agriculture Act of 2014 extended the programme for another 5 years, until the end of 2018.

3.2.3.2. Eligibility

- (65) This programme provides direct grants to producers of advanced biofuels, which are generally defined as 'fuel derived from biomass other than corn kernel starch'. The definition includes diesel produced from biomass ⁽¹²⁾. No more than five percent of the programme's funds may be distributed to eligible producers with a refining capacity exceeding 150 000 000 gallons of advanced biofuel per year. Blenders are not eligible for the programme.

3.2.3.3. Practical implementation

- (66) Participants receive direct payments from the government after having applied for the programme. Producers have to register first with the authority and sign a contract. The producers must submit payment applications for each quarter of the fiscal year in order to receive payment for that quarter's production of advanced biofuel. Payments are provided for both actual production and incremental production. Actual production payments are calculated quarterly for the amount of actual advanced biofuel produced each quarter.
- (67) Incremental production payments are made for the quantity of eligible advanced biofuel produced in a fiscal year that exceeded the quantity produced in the prior fiscal years (since 2009).
- (68) The funding is divided among all producers who come forward based on the Btu ⁽¹³⁾ value of the production. The funding is distributed evenly among all producers depending on Btu value.

3.2.3.4. Conclusion

- (69) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the United States of America in the form of a direct grant. The incentive confers a benefit on the companies receiving them.
- (70) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.2.4. Credit for Production of Cellulosic Biofuel

3.2.4.1. Legal basis

- (71) The programme exists since 1 January 2009 and was established by the Food, Conservation, and Energy Act of 2008. After 1 January 2011 the programme was extended in the same way as the other three schemes above (see details in Section 3.4.1 below). The law adopted on 19 December 2014 retroactively reinstated the scheme for the entire year of 2014 ⁽¹⁴⁾, but companies can carry forward up to 20 years the tax credit acquired from the scheme.

⁽¹²⁾ Section 428.102 'Definitions' of the implementing regulations: 'Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat.' Potentially 'biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste' could also include production of biodiesel.

⁽¹³⁾ The British thermal unit (BTU or Btu) is a unit of energy equal to about 1 055 joules.

⁽¹⁴⁾ By means of Tax Increase Prevention Act of 2014, signed by the President of the USA on 19 December 2014. Extension of Second Generation Biofuel Producer Credit thereof.

3.2.4.2. Eligibility

- (72) This scheme provides for USD 1,01 per gallon non-refundable general business income tax credit to second generation biofuel used as fuel or sold for use as fuel. Producers are eligible, including producers of biofuel derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, as well as algae-based fuels.

3.2.4.3. Practical implementation

- (73) The US authorities did not submit detailed figures about the benefits provided during the RIP. They claimed that they will only know the benefits for 2013 by October 2015 and for 2014 by 2016. However, it seems that the scheme has not provided benefits to producers of diesel qualifying as second generation fuel. This is due to the fact that so far such diesel does not seem to be produced on a commercial basis and the quantities produced and sold on the market are rather marginal.

3.2.4.4. Conclusion

- (74) In view of the above, the Commission does not consider that this scheme provided benefits to biodiesel producers during the RIP and did not analyse its impact on possible continuation and/or recurrence of subsidisation.

3.3. Subsidisation of imports during the RIP — State Schemes

3.3.1. *Florida Biofuels Investment Tax Credit*

3.3.1.1. Legal basis

- (75) The legal basis of this scheme operated by the Florida Department of Agriculture and Consumer Services is Section 220.192 of the Florida Statutes.

3.3.1.2. Eligibility

- (76) The Renewable Energy Technologies Investment Tax Credit programme provides an annual corporate tax credit to all eligible entities for all capital costs, operation and maintenance costs, and research and development costs incurred between 1 July 2012, and 30 June 2016, in connection with an investment in the production, storage, and distribution of biodiesel, ethanol, and other renewable fuel in the state of Florida.

3.3.1.3. Practical implementation

- (77) Applications for the tax credit must be received by the department on or before 1st November of each year and are reviewed on a first-come, first-served basis. Applications must include supporting documentation for all eligible costs. Applicants must also submit a summary describing how the materials are being used in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ethanol (E10-E100) or other renewable fuels in Florida. In addition, applicants must submit with the completed application a description of the project's economic impact in Florida.
- (78) The scheme offers an annual corporate tax credit equal to 75 % (up to USD 1 million per taxpayer and USD 10 million total per state fiscal year) of all capital costs, operation and maintenance costs, and R & D costs in connection with an investment in the production, storage and distribution of, among others, biodiesel and other renewable fuel in the state. The credit is up to USD 1 million per taxpayer and the unused amount may be carried forward and used in tax years from 1 January 2013 until 31 December 2018, after which the credit carryover expires and may not be used.

3.3.1.4. Conclusion

- (79) The Commission considers 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 Florida in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.
- (80) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.3.2. *Iowa Biodiesel Producer Tax Refund*

3.3.2.1. Legal basis

- (81) The legal basis of this scheme operated by Iowa Department of Revenue is Section 423.4(9) of the Iowa Code.

3.3.2.2. Eligibility

- (82) 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.

3.3.2.3. Practical implementation

- (83) 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, issues a refund check to each biodiesel producer.
- (84) 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.
- (85) The programme provides a refund of USD 0,03 per gallon of biodiesel produced in Iowa (USD 0,03 for 2012, USD 0,025 for 2013 and USD 0,02 for 2014-2017). The refund is limited to the first 25 million gallons produced at each facility.

3.3.2.4. Conclusion

- (86) The Commission considers 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.
- (87) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.3.3. *Kansas Qualified Biodiesel Fuel Producer Incentive*

3.3.3.1. Legal basis

- (88) The legal basis of this scheme operated by the Kansas Department of Revenue is Kansas Statutes Annotated (K.S.A.) 79-34,155 through K.S.A. 79-34,159 and Kansas Administrative Regulations (K.A.R.) 92-27-1 through K.A.R. 92-27-5. The scheme will expire on 1 July 2016.

3.3.3.2. Eligibility

- (89) The Kansas Qualified Biodiesel Fuel Producer Incentive Fund provides a direct grant of USD 0,30 per gallon to biodiesel producers established in the state of Kansas. Incentive payments are contingent on funds available and are distributed on a pro rata basis, if required.
- (90) The scheme has been underfunded in recent years and at this stage no funding is planned up until 1 July 2015. The scheme did not receive funding after 1 July 2014 either. Nevertheless, the scheme did provide benefits to several US producers during the RIP. In addition, it cannot be excluded that part or the total amount of funding provided for in the statutory acts (USD 875 000 quarterly) could be allocated to the scheme after 1 July 2015.

3.3.3.3. Conclusion

- (91) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the State of Kansas in the form of a direct grant. The incentive confers a benefit on the companies receiving them.
- (92) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.3.4. Kentucky Biodiesel Production Tax Credit

3.3.4.1. Legal basis

- (93) The legal basis of this scheme operated by Kentucky Department of Revenue is Kentucky Revised Statutes (KRS) 154.27 and Kentucky Administrative Regulations (KAR) 307 KAR 1:040.

3.3.4.2. Eligibility

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

3.3.4.3. Practical implementation

- (95) An eligible applicant must submit to the Department of Revenue an application on or before January 15 of the preceding calendar year. The applicant must provide evidence that the biodiesel produced meets certain specification requirements.
- (96) 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.
- (97) The credit rate is one dollar (USD 1) per biodiesel gallon produced by a biodiesel producer, 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 biodiesel and renewable diesel tax credit cap.

- (98) The combined annual cap for biodiesel and renewable diesel tax credit for 2013 and 2014 was USD 10 million in accordance with KRS 141.422 (1)(c).
- (99) If the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap, the department shall determine the amount of credit each biodiesel producer, biodiesel blender, and renewable diesel producer receives by multiplying the annual biodiesel and renewable diesel tax credit cap by a fraction, the numerator of which is the amount of approved credit for the biodiesel producer, biodiesel blender, and renewable diesel producer and the denominator of which is the total approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers.

3.3.4.4. Conclusion

- (100) The Commission considers 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.
- (101) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.4. Likelihood of continuation or recurrence of subsidisation

- (102) The main scheme, as in the original investigation, continued to be the Biodiesel mixture credit scheme. This scheme was in force during the RIP but expired on 31 December 2014. Its legislative developments and its likelihood to be reintroduced are analysed below, together with the biodiesel credit and the small agri-biodiesel producer income tax credit.

3.4.1. Expirations and prolongations of the three federal schemes

- (103) The three federal schemes (Biodiesel mixture credit, Biodiesel credit and Small agri-biodiesel producer credit) were enacted by American Jobs Creation Act of 2004 ⁽¹⁵⁾ and first entered into force on 1 January 2005. They were due to expire on 31 December 2008. Since then, they had been due to expire and had been extended four times:
- (i) The first extension was until 31 December 2009 and was enacted by Public Law 110-343, signed on 3 October 2008 (the 'Emergency Economic Stabilization Act of 2008: Division B — Energy Improvement and Extension Act of 2008');
 - (ii) The second extension was until 31 December 2011 and was enacted by Public Law 111-312, signed on 17 December 2010 (The 'Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010');
 - (iii) The third extension was until 31 December 2013 (covering also retroactively 2012) and was enacted by Public Law 112-240, signed on 2 January, 2013 (the 'American Taxpayer Relief Act of 2012');
 - (iv) The fourth and so far last extension was until 31 December 2014 and was enacted by Tax Increase Prevention Act of 2014, signed by the President of the USA on 19 December 2014.

⁽¹⁵⁾ As extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58) and amended by the Energy Improvement and Extension Act of 2008 (P.L. 110-343, Division B) §202-203.

- (104) Consequently, throughout their existence, the three federal schemes have not only been constantly reinstated but were on two occasions (in 2013 and in 2014) even reinstated retroactively 11 months after they had expired. Therefore, since the introduction of the schemes in 2005, until the end of 2014, whether by means of simple extensions of the schemes, or by extensions with retroactive effects, the three federal schemes have been constantly available to US biodiesel producers.
- (105) The funding for 2014 will only be disbursed to the beneficiaries in the second half of 2015 ⁽¹⁶⁾ since the deadline for applying for the retroactively introduced programme was extended until 8 August 2015.

3.4.2. *Likelihood of recurrence of subsidisation of the three federal schemes*

- (106) The Commission considers that there is a strong likelihood that the three federal schemes will be reinstated in the near future, including covering retroactively the period after 31 December 2014 for the following reasons:
- (107) First, the past four extensions described in section 3.4.1 above show an established pattern to reinstate the schemes.
- (108) After final disclosure, NBB claimed that there would be no established pattern to reinstate the schemes since the two last reinstatements of the scheme were for the past and not for the future. On this basis, NBB states that if there is a pattern which could be replicated in 2015, there could possibly be a reinstatement for 2015 but not for 2016. Allegedly, it would be not possible to predict with sufficient degree of probability that biodiesel produced in the US would benefit from the Biodiesel mixture credit when sold in 2016.
- (109) NBB's claim is factually incorrect and should therefore be rejected. Only the last reinstatement of the scheme covered exclusively the past (for 2014), while all previous reinstatements included also future periods. For example, the reinstatement on 2 January 2013 covered retroactively 2012, but also the full year 2013. Similarly, the extensions in 2008 and 2010 also covered 2009 and 2011 respectively. Thus, there is not only a pattern of retroactive reinstatement of the schemes, but also all past reinstatements, except for the one in 2014, covered also future periods of operation of the scheme. In any event, it is irrelevant whether the next reinstatement of the scheme would cover only 2015 or also 2016. So far, the result of the previous reinstatements was a continuing subsidisation, and nothing indicates that such pattern will stop. Therefore, it is likely that 2016 (and the following several years) would be retroactively covered by future reinstatement(s), taking into account the following elements:
- (i) the established pattern to reinstate the schemes;
 - (ii) the established fact in recitals (116)-(120) below that there has been no change in the prices of biodiesel in US domestic markets after the previous expiries of the schemes;
 - (iii) the continuation and non-abolition of the funding for the schemes in the past; and
 - (iv) the circumstance that, even if the schemes were to be abolished, they should have to be gradually reduced.
- (110) NBB also submitted a number of arguments in support of the view that the reinstatement of the three federal schemes would be a pure possibility, but not a probability. First, it quoted a declaration by the International Council on Clean Transportation (ICCT) allegedly stating that there would be no evidence that biodiesel still needs a tax credit.

⁽¹⁶⁾ The authority (Internal Revenue Service) has to pay within 60 days after the claim is received (the latest on 8 August 2015) or IRS has to pay compensation.

- (111) Second, NBB pointed out that a recent Biodiesel Tax Incentive Reform and Extension Act of 2014 (also known as Draft Bill 2021), proposing to extend the biodiesel income and excise tax credits through 31 December 2017, failed to pass the Congress. NBB claimed that the House of Representatives is allegedly also not expected to take up or pass legislation during 2015 that would continue the biodiesel (mixture) credit.
- (112) The first claim concerns a declaration by ICCT dated 31 July 2014. However, the US authorities did not follow this advice and prolonged the scheme at the end of the same year. Consequently, little weight should be given to a declaration of ICCT, when assessing the probability of future reinstatements.
- (113) Regarding the second statement, the Draft Bill S.2021 ⁽¹⁷⁾ was not adopted by the 2013-2014 Congress and the House of Representatives has not passed an extension of the tax incentives. However, a new draft law was introduced in the Congress on 21 May 2015 and it proposes the extension of the three subsidy schemes for the period between 31 December 2014 and 31 December 2016 ⁽¹⁸⁾. Therefore, it is factually incorrect that there is currently no legislative proposal discussed in the US legislative system. Even if this new law fails to be adopted, experience has shown that, under the US legislative system, it is possible that a Law is proposed and passed in only 18 days. According to the information provided by the USG, the Tax Increase Prevention Act of 2014 was first introduced in the U.S. House of Representatives only on 1 December 2014, while the final step in the legislative procedure was only 18 days later when President Obama signed the bill into law on 19 December 2014. Moreover, given the fact that, under the US legal system, such extensions can be applied retroactively — for example the reinstatement in 2013, which covered retroactively also 2012 — the adoption of a new extension can even take place after 2015.
- (114) Following final disclosure, NBB also claimed that the Commission's assessment (see recital (107) above) would not meet the legal requirements of Article 18(1) of the basic Regulation which in their view requires the Commission to demonstrate that the expiry of the countervailing duties would lead to recurrence of subsidisation.
- (115) Article 18(1) of the basic Regulation requires demonstrating the likelihood of recurrence of subsidisation, which necessarily implies that subsidised imports into the EU would resume absent the measures. As analysed in detail in section 3.5 below, the Commission established that it is likely that US biodiesel producers will resume exporting biodiesel at subsidised prices to the Union market at large volumes, if measures are allowed to lapse.
- (116) Second, no changes in the prices of biodiesel in the US domestic market have been observed which could be linked to the past expiry of the schemes or to their current expiry after 31 December 2014. According to the data provided by NBB ⁽¹⁹⁾, domestic prices of biodiesel dropped during the financial crisis in 2008, increased in the second and third quarter of 2010 and then remained rather stable until the end of 2013. In the first half of 2014, prices decreased by around 30 %, while they would have been expected to increase, if the producers anticipated that the schemes would not be reinstated. This shows that biodiesel producers, as well as other market operators, had strong expectations that the schemes would be retroactively reinstated in the future, taking into account:
- (i) the significance of the subsidies compared to the sales price of biodiesel; and
 - (ii) the fact that the original investigation revealed that some biodiesel producers include directly in their prices the purchaser's credit of the USD 1 per gallon scheme ⁽²⁰⁾.
- (117) Following final disclosure, NBB claimed that biodiesel prices fluctuate in accordance with the prices of mineral diesel and the cost of the feedstock. Thus, NBB argued that no inference can be made from the price evolution of biodiesel for the likelihood of recurrence of subsidisation, unless the impact of the cost of feedstock and the impact of the mineral diesel prices is taken into account.

⁽¹⁷⁾ <https://www.congress.gov/bill/113th-congress/senate-bill/2021/text>

⁽¹⁸⁾ HR 2517 'Powering American Jobs Act of 2015', introduced by Mike Kelly. Available at [https://www.congress.gov/bill/114th-congress/house-bill/2517/text?q={%22search%22%3A\[%22%22hr2517%22%22\]}#toc-H48B28727047A4954BB43B03E81976580](https://www.congress.gov/bill/114th-congress/house-bill/2517/text?q={%22search%22%3A[%22%22hr2517%22%22]}#toc-H48B28727047A4954BB43B03E81976580), accessed on 8 July 2015.

⁽¹⁹⁾ NBB's submission dated 29 September 2014.

⁽²⁰⁾ See recital 55 of Regulation (EC) No 194/2009.

- (118) Irrespective of the impact of the prices of mineral diesel and the costs of the feedstock on the price fluctuation of biodiesel, the Commission concludes that the subsidy obtained by the biodiesel producers for each gallon of biodiesel produced must have reduced significantly the cost of production. This is also reflected in the final determination of the price of biodiesel. Since there was no cooperation from US companies, it is not possible to establish the exact effect of the subsidy on the cost of production. However, the Commission estimated that the one dollar (USD 1) provided for each biodiesel gallon produced constituted approximately one third of the final US domestic price of biodiesel during the RIP. Consequently, it reiterates its findings that biodiesel prices would have been expected to increase in the past, if the producers anticipated that the schemes would not be reinstated. However, no changes in the prices of biodiesel in the US domestic market have been observed which could be linked to the past expiry of the schemes or to their current expiry after 31 December 2014.
- (119) Third, not only could the US biodiesel industry continuously avail itself of the subsidies provided by the three federal schemes, but also the funding had never been abolished for a particular time period. The scheme was never underfunded nor was its scope of beneficiaries/benefits provided reduced. On the contrary, in 2008 ⁽²¹⁾ the credit for USD 1 per gallon was extended to all producers of biodiesel and not only to producers of agri-biodiesel. Indeed, the funding provided in 2013 more than doubled in comparison with 2012, while for the first half of 2014 the funding was higher than the total one for 2013 ⁽²²⁾.

Funding in million USD	2011	2012	2013	1.06.2013- 31.12.2013	2014 (until 30 June, 2014)
Biodiesel Fuel Mixture Excise Credits	760,7	847,0	1 603,2	1 427,8	1 830,2

- (120) Fourth, given the importance of the schemes for the US biodiesel industry and the expectations from all market operators that the schemes would continue to exist, even if the US were to decide to abolish the schemes for the future, it could not do so by simply allowing the schemes to expire. Instead, the funding available would have to gradually be reduced, i.e. within several years, and/or the number of eligible beneficiaries would have to be restricted. Otherwise it would risk causing serious injury to its domestic biodiesel industry, thereby leading to significant job losses (the industry employs around 60 000 people ⁽²³⁾), dependency on imports of diesel and failure to meet the environmental objectives set by the Government by using biodiesel ⁽²⁴⁾.
- (121) After final disclosure, NBB claimed that the fact that sufficient funding was available in the past and that the scope of beneficiaries' benefits was not reduced in the past is irrelevant for a determination of the likelihood of recurrence of a subsidy programme that has expired. NBB further claimed that the fact that the US biodiesel industry employs around 60 000 people does not automatically mean that the subsidy programmes must be reinstated or must decline over time. Finally, the fact that Renewable Fuel Standard ('RFS')-2 requires a minimum of 1 billion gallons of biomass-based diesel to be used annually between 2011 and 2021 does not mean that this goal will not be achieved if the subsidy programmes are not reinstated.
- (122) The Commission concludes that, given the magnitude of the funding provided by means of the three federal schemes and the expectations from all market operators that the schemes would continue to exist, it would be very difficult for the US authorities to simply allow the schemes to expire. The level of employment by the

⁽²¹⁾ By means of Section 202(a) of the Energy and Improvement and Extension Act 2008. However, Section 203 thereof amends I.R.C. Sections 40A and 6426 to exclude biodiesel imported and sold for export from the credits effective as from 15 May 2008. This is, however, a reduction of the scope of beneficiaries which has no actual effects on the US domestic market as it does not concern either production or importation of biodiesel consumed in the USA.

⁽²²⁾ Source: US Government reply. NB: the quoted figures cover only excise tax credits, but do not cover income tax credits and direct grants for which the USG did not provide information.

⁽²³⁾ According to the NBB, 'Biodiesel Basics What is biodiesel?', <http://www.biodiesel.org/what-is-biodiesel/biodiesel-basics>, accessed on 24 March 2015.

⁽²⁴⁾ The Renewable Fuel Standard-2, established by the Energy Policy Act (EPA) of 2005, and subsequently by Energy Independence and Security Act (EISA) of 2007, requires a minimum of 1 billion gallons of biomass-based diesel be used annually between 2011 and 2022. It also requires the country use no less than 21 billion gallons of advanced biofuels by 2022. Biodiesel qualifies for compliance under both categories. Source: <http://www.biodiesel.org/what-is-biodiesel/biodiesel-faq's>, accessed on 30.3.2015.

industry, the environmental and economic objectives served by the industry are important indicators of what would be at stake, if the US biodiesel industry is forced to reduce its production and capacity in the absence of or in the case of reduced federal subsidies. In addition, under this scenario the environmental objective (contained in RFS-2) of using no less than 22 billion gallons of advanced biofuels by 2022 ⁽²⁵⁾, for which biodiesel also qualifies, will be also under threat.

- (123) Consequently, the Commission considers that there is strong likelihood that the biodiesel mixture credit, biodiesel credit and small agri-biodiesel producers' credit schemes will be retroactively reinstated and will continue to confer benefits to US biodiesel producers in the future. The three federal schemes will likely cover retroactively the period after 31 December 2014, as has proven to be already the case in the past.
- (124) NBB further claimed that, whilst Article 18(1) of the basic Regulation refers to the likelihood of recurrence of subsidisation, countervailing duties cannot be maintained if a subsidy programme is withdrawn at the time of findings in an expiry review and countervailing duties cannot be implemented when there is no subsidy to counteract so as to prevent injury being caused. The opposite would be inconsistent with Articles 15(1) and 17 of the basic Regulation, as well as with Article 19 of the Agreement on Subsidies and Countervailing Measures. NBB further claimed that a coherent reading of these provisions would determine that duties can only be maintained if the subsidy programme as such is still in place, but benefits under the programme are not afforded.
- (125) This claim should be rejected. The wording of Article 18 of the basic Regulation does not necessarily require the Commission to establish that subsidisation actually exists in order to decide on the extension of the measures. Rather, Article 18 of the basic Regulation foresees that, while the measures are in force, subsidisation may not occur, and hence, it allows the possibility to establish a 'likelihood of recurrence of subsidisation'. Thus the existence of a subsidy scheme in force at the moment of extension is not an absolute requirement set out by Article 18 of the basic Regulation.
- (126) Moreover, the context confirms that Article 15(1), 3rd sentence, of the basic Regulation is not applicable to expiry reviews. Article 15 of the basic Regulation in general determines the conditions for the imposition of definitive measures in the case of Article 10 investigations (that is new investigations). Indeed, many of its provisions are not applicable to expiry review investigations initiated pursuant to Article 18 of the basic Regulation. For example, Article 15(1) fifth paragraph thereof specifies that '*the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established*'. This paragraph is clearly not applicable to expiry reviews since according to Article 22(3) of the same regulation when an expiry review is conducted measures can only be repealed or maintained and thus cannot determine the amount of countervailing duty.
- (127) Similar wording exists in Article 19 of the Agreement on Subsidies and Countervailing Measures which also clearly governs the conditions for the imposition of definitive measures in the case of new investigations.
- (128) For the same reasons set out in recitals (125)-(127) above, the Commission is of the view that Article 17 of the basic Regulation is not applicable to expiry review investigations initiated pursuant to Article 18 of the basic Regulation.
- (129) Finally, the purpose of Article 18 of the basic Regulation is to carry out a prospective analysis of the likelihood of continuation or recurrence of subsidisation and injury. Such an exercise suggests a certain degree of probability and distinguishes Article 18 of the basic Regulation from Articles 15(1) and 17 of the basic Regulation, whose objectives are to take into account a change in circumstances which has already occurred.
- (130) Therefore, based on the wording, context and the objectives of Article 18, the Commission considers that Articles 15 and 17 of the basic Regulation do not apply to expiry reviews.
- (131) For the reasons set above, the Commission rejects the claims put forward by NBB.

⁽²⁵⁾ See footnote 21 above.

3.4.3. Likelihood of continuation of subsidisation of other schemes

- (132) All subsidy schemes analysed above, on the basis of which subsidies were granted, were in force during the RIP.
- (133) A number of small schemes are currently still in force, such as the bioenergy programme for advanced biofuel and the state subsidy schemes, and there are no indications that these schemes will come to an end in the near future.
- (134) Therefore, with regard to the schemes in force, the Commission considers that the expiry of the measures would be likely to lead to the continuation of subsidisation.

3.5. Impact of subsidisation on the exports to the EU

- (135) The Commission also examined whether subsidised exports from the USA to the Union would be made in significant volumes should the measures be allowed to lapse. Due to lack of cooperation from the selected sampled producers mentioned in recital (20) above, it was not possible to carry out an analysis based on verified data supplied by US producers. The Commission therefore made use of the following sources of information: the data provided by some US biodiesel producers at initiation stage in reply to the questionnaire for the purpose of the sampling, Eurostat, the request for an expiry review, subsequent submissions from the applicant, the US National Biodiesel Board (NBB), the websites of the US Energy Information Administration (EIA) and the US Department of Energy, and the US International Trade Commission.
- (136) On the basis of data collected from the EIA, the US biodiesel producers' capacity during the RIP was 7 128 000 tonnes. This volume is very close to the volume provided by the NBB based on the information submitted by its members to Environmental Protection Agency (EPA), that is 6 963 000 tonnes.
- (137) The US actual production of biodiesel during the RIP was 4 450 000 tonnes (EIA's data), which corresponds to a capacity utilisation of 62,4 % and a spare capacity of 37,6 %, that is 2 678 000 tonnes. This spare capacity is likely to be used to supply the Union market should measures be allowed to lapse. Indeed, the US producers can easily increase their production and export it to the EU with the economic benefit of the increase in capacity utilisation ratio and reduction of unit cost of production. The release in the Union market of the US spare capacity would have a significant impact as it amounts to nearly 22 % of the Union consumption during the RIP.
- (138) In this respect, the NBB submitted a number of comments. First, the NBB pointed out that the US real production capacity would be lower than that considered by the Commission. Indeed, according to the NBB, a number of plants in the US, albeit registered, are actually inactive and therefore the real production capacity is 5 409 000 tonnes. The NBB also reported a higher production of biodiesel during the RIP, amounting to 5 084 000 tonnes. As a consequence, the NBB claimed that the capacity utilisation is around 94 % and that there is little spare capacity to be used to export to the EU if measures were repealed.
- (139) However, this claim cannot be accepted. The data provided by the NBB cannot be reconciled with officially available data. Biodiesel producers in the USA are obliged to submit to EIA on a monthly basis a form (EIA-22M 'Monthly Biodiesel Production Survey') indicating, among other data, the annual production capacity and their operating statuses, such as active, temporarily inactive or permanently ceased operations. Since January 2013, the registered capacity varied slightly from one month to another but was overall rather stable.
- (140) In addition, biodiesel producers in the USA are obliged to submit to EPA on an annual basis, among other information, the type, or types, of renewable fuel expected to be produced or imported and the existing and planned production capacity.
- (141) The registered capacity that US biodiesel producers have declared is thus updated regularly and is therefore considered as an accurate source. Even if the registered capacity is currently unused or idle, it must be taken into account for the calculation of the spare capacity which is available to increase production and exports.

- (142) Moreover, the production capacity values provided by the NBB already excluded the permanent shuttered capacity, as acknowledged in their submission. Plants which are not permanently shuttered can by definition start production again, if future market conditions change (such as the opening up of the Union market). The 'likelihood-of-recurrence' test in an expiry review requires a forward looking approach about what could happen in the future if measures were allowed to lapse, and not a simple stock-taking of the situation during the RIP.
- (143) Following final disclosure, the NBB maintained that the production capacity should not take into account idle capacity even if this capacity was not notified to the US authorities as dismantled or permanently shuttered.
- (144) However, following the EIA instructions quoted by NBB, the '*annual production capacity [is] the quantity of biodiesel that a plant can produce in a calendar year, assuming normal downtime for maintenance. It includes the capacity of idle plant until the plant is dismantled or abandoned*' ⁽²⁶⁾. It is clear from the above that EIA takes into account in the total production capacity in the USA all possible plants which potentially can become active again. Consequently, contrary to what NBB argues, plants which are not dismantled or permanently shuttered can by definition start production again, if future conditions change. Therefore this idle capacity has to be considered as part of the total US biodiesel production capacity.
- (145) The Commission considers therefore that the current registered capacity constitutes an accurate basis for calculating the total US production capacity and spare capacity and rejects the NBB claim.
- (146) Second, the NBB also claimed that the US biodiesel industry is not designed to operate as an exporting industry, as most US biodiesel facilities produce less than 15 000 000 gallons (55 000 metric tonnes) per year. Allegedly, it would not be economically feasible to stock several weeks of biodiesel production for a single export shipment.
- (147) The Commission considers that this claim must be rejected. The US biodiesel industry can export and before imposition of the measures in force, the US producers were exporting significant quantities of biodiesel to the Union market, up to 1 137 000 tonnes during the investigation period of the initial investigation (1 April 2007 to 31 March 2008). This shows that there are US producers with sufficient production capacity to be able to export. In addition, the US producers without sufficient individual production capacity for a shipment to the Union will continue serving the domestic market and traders can put together the output of several plants and export it.
- (148) Moreover, the Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption. Last but not least, the level of prices in the Union, which are higher than in other third markets, would incentivise the US producers to export to the Union rather than to other third markets.
- (149) Therefore, the Commission concludes that in view of the likelihood of continuation and recurrence of subsidisation, combined with the significant spare capacity of the US biodiesel industry and the attractiveness of the Union market, it is likely that US biodiesel producers will resume exporting biodiesel at subsidised prices to the Union market at large volumes, if measures are allowed to lapse.

3.6. Conclusion

- (150) In view of the above, in accordance with Article 18(3) of the basic Regulation, the Commission concludes that there is a likelihood of continuation and recurrence of subsidisation should the measures in force be allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (151) The like product was manufactured by around 200 producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

⁽²⁶⁾ http://www.eia.gov/survey/form/eia_22m/instructions.pdf, accessed on 7.7.2015.

- (152) The total Union production during the review investigation period was established at almost 11 600 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information provided in the request for an expiry review and data collected from Union producers during the investigation. As indicated in recitals (12)–(14) above, seven Union producers were selected in the sample representing almost 30 % of the total Union production of the like product.

4.2. Union consumption

- (153) The Commission established the Union consumption on the basis of the volume of the total Union production minus exports, plus imports from third countries. Import and export volumes were extracted from Eurostat data.
- (154) Union consumption developed as follows:

Table 1

Union consumption

	2011	2012	2013	RIP
Total Union consumption (metric tonnes)	11 130 119	11 856 626	11 382 324	12 324 479
<i>Index</i>	100	107	102	111

Source: Data from Union industry, Eurostat

- (155) Based on the above the Union consumption of biodiesel increased by 11 % over the period considered.

4.3. Imports of the product concerned from the USA

4.3.1. Volume and market share of the imports from the country concerned

- (156) Imports of biodiesel from the USA to the Union have, according to Eurostat data, dropped to almost zero since the imposition of measures in 2009. Imports into the Union from the country concerned and market share have developed as follows:

Table 2

Import volume and market share

	2011	2012	2013	RIP
USA (metric tonnes)	2 442	803	7	13
<i>Index</i>	100	33	0	1
Market share	0	0	0	0

Source: Eurostat

4.3.2. Prices and price undercutting

4.3.2.1. US domestic prices

- (157) In the absence of cooperation from the US biodiesel producers, the Commission services made use of three sources of information for establishing the domestic sales price of biodiesel in the US during the RIP: (i) the replies to the questionnaire sent out at initiation stage for the purpose of sampling, submitted by a number of US biodiesel producers at initiation stage; (ii) information provided by the NBB based on information gathered by a market surveyor named 'Jacobsen'; and (iii) information provided by the applicant based on information gathered by the Oil Price Information Service (OPIS).

- (158) The data from these three sources include different levels of trade prices and incoterm conditions. However, the values are very close to each other. The average of the values from these three sources is USD 1 196,93 per metric tonne. At the euro/dollar average exchange rate during the RIP (EUR 1 = USD 1,356), this amount corresponds to a US domestic sales price of EUR 883 per metric tonne ⁽²⁷⁾.

4.3.2.2. US export prices and undercutting

- (159) During the review investigation period the imports of biodiesel to the Union from the USA were negligible and could not provide a meaningful basis for calculating undercutting.
- (160) An analysis was therefore made between the average price of biodiesel produced and sold in the Union by the Union industry and the average export price of biodiesel to third countries from the USA in the RIP. The Commission consulted the database of the United States International Trade Commission and extracted the quantities and values of the export of biodiesel under the HTS code 382600 for the RIP. The export quantities (in metric tonnes) to all countries (EU included) amount to 567 018 tonnes. The average value per metric tonne during the RIP was EUR 753,34.

Table 3

US export volumes and export prices during the RIP

Countries of destination	Export quantities (metric tonnes)	% of exports to all countries	Average value (USD) per metric tonne	Average value (EUR) per metric tonne
Total Gibraltar	76 266	13	753,19	555,45
Total Canada	247 959	44	1 167,33	860,86
Total Australia	4 267	1	1 019,77	752,04
Total Malaysia	103 773	18	891,44	657,41

- (161) During the RIP the average export price of the US biodiesel to all destinations was USD 1 021,52 (EUR 753,34) per metric tonne FAS (free alongside ship). In order to calculate a likely and reasonable Union export price it would be necessary to add costs for transport and insurance as well a customs duty of 6,5 % and post-importation costs to this price. According to data obtained during the investigation, this would amount to approximately EUR 100 per metric tonne. It follows that an estimated export price to the Union would be undercutting the Union prices, as the average domestic price of biodiesel sold by the Union producers during the RIP was EUR 905 per metric tonne (see table 8 below).
- (162) The US National Biodiesel Board (NBB) claimed that the Commission failed to explain why it used the average US export prices to third countries when establishing a likely Union export price rather than using the higher export price to Canada. It also contends that the Commission failed to explain the basis for the EUR 100 adjustment to the estimated export price to the Union and did not take into account post-importation costs as well as alleged price differences due to different feedstock. As a result, the undercutting analysis is flawed
- (163) The investigation demonstrated, as described above, that US export prices vary significantly depending on destination. Therefore, in order to establish a reasonable and likely export price to the Union, the Commission established that price on the basis of an average to all export destinations. To simply use the highest export price, as claimed by NBB, would not have been an appropriate method in the same way as using the lowest export price would have been inappropriate.

⁽²⁷⁾ Due to a typographical error, the price mentioned in the Disclosure Document was wrongly indicated at EUR 884.

- (164) With regard to the EUR 100 adjustment, the basis for the Commission's calculations was information provided by NBB itself. More specifically, the Commission used the amount for customs duties and for transport costs as provided by NBB (around EUR 94) and rounded it up to EUR 100, which would also take into account an amount for post-importation costs. The amount for post-importation costs as claimed by NBB (2 % of CIF frontier value or EUR 16,69) was disregarded since this amount was not substantiated.
- (165) As far as the alleged price difference due to different feedstock is concerned, the Commission recalls that in the original investigation an adjustment was granted on the basis of a comparison of verified data from US producers and Union producers. In the absence of cooperation from the US producers in the present expiry review, the Commission could, firstly not establish that an adjustment should be granted. Secondly, even if an adjustment were to be granted, the Commission could not establish the level of such an adjustment. The circumstances prevailing at the time of the original investigation have changed, in particular the mix of the feedstock used both in the EU and in the USA to produce biodiesel is no longer the same. In any event, NBB claimed an adjustment of 10 %, but has not substantiated this level of the adjustment.
- (166) It follows from the above consideration that NBB's claim that the undercutting analysis is flawed must be rejected.

4.3.3. Imports from other third countries

- (167) The volume of imports from other third countries developed over the period considered as follows:

Table 4

Imports from third countries

	2011	2012	2013	RIP
Malaysia (metric tonnes)	16 622	36 543	211 430	314 494
Indonesia (metric tonnes)	1 087 517	1 133 946	394 578	204 086
Argentina (metric tonnes)	1 422 142	1 475 824	425 239	153 607
Others (metric tonnes)	139 580	153 529	177 889	206 592
Total (metric tonnes)	2 665 861	2 799 842	1 209 136	878 779
<i>Index</i>	100	105	45	33
Market share	24,0 %	23,6 %	10,6 %	7,1 %
<i>Index</i>	100	99	44	30
Average price (EUR/tonne)	927	932	779	786
<i>Index</i>	100	100	84	85

Source: Eurostat

- (168) The volume of imports of biodiesel from third countries other than the USA has decreased significantly over the period considered which is reflected in a similar decrease in market share. The decrease in import volumes from 2013 coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina. The average price has also decreased by 15 % during the same period. The price trend is similar to the trend for the Union industry prices on the Union market (table 8 below) and can mainly be attributed to a decrease in feed stock prices. Albeit the price levels are approximately 13 % below the average Union price, the market share of these imports is low and does not have any significant impact on the Union industry.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (169) In accordance with Article 8(4) of the basic Regulation, an examination of all relevant economic indicators having a bearing on the state of the Union industry during the period considered was carried out.
- (170) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers and the microeconomic indicators on the basis of verified data from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (171) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (172) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (173) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2011	2012	2013	RIP
Production volume (metric tonnes)	8 547 884	9 138 558	10 528 886	11 596 824
<i>Index</i>	100	107	123	136
Production capacity (metric tonnes)	16 072 000	16 190 288	16 997 288	16 746 869
<i>Index</i>	100	101	106	104
Capacity utilisation	53 %	56 %	62 %	69 %
<i>Index</i>	100	106	116	130

Source: Data provided by EBB (the applicant)

- (174) Whilst the production capacity remained relatively stable during the period considered (+ 4 %), the production volumes increased significantly as from 2012 until the end of the review investigation period. This increase in production volumes is partly explained by the increase in Union consumption for the same period but also coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina, which clearly had a positive effect on the Union industry production volumes.
- (175) As a result of the stable production capacity and increased production volumes, the capacity utilisation increased over the period considered by 30 % and was at 69 % by the end of the review investigation period.

- (176) NBB claims that the non-confidential questionnaire responses from some of the sampled companies show high capacity utilisation rates ranging from 78 % up to at least 93 %. Therefore, the lower average capacity utilisation rate of the whole industry must be due to structural factors rather than imports. In these circumstances, the capacity utilisation should not be taken into account as an indicator showing that the Union biodiesel industry is still in a process of recovering from past subsidisation.
- (177) This claim cannot be accepted. Capacity utilisation is only one of many macroeconomic indicators that the Commission considers when analysing the overall situation of the Union industry. The fact that some companies in the sample may have higher utilisation rates is normal since macroindicators are based on the weighted average of the entire Union industry. That some biodiesel producers in the Union have recovered faster, or to a higher degree, than others, particularly in a highly fragmented industry, does not render this indicator superfluous for the overall assessment of the situation of the Union industry.

4.4.2.2. Sales volume and market share

- (178) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2011	2012	2013	RIP
Sales volume on the Union market (metric tonnes)	8 497 073	8 863 191	9 741 548	10 966 576
<i>Index</i>	100	104	115	129
Market share	76 %	75 %	86 %	89 %
<i>Index</i>	100	98	112	117

Source: Data provided by EBB (the applicant)

- (179) Union industry sales volumes have increased significantly and in line with its increased production during the period considered. As a result also its market share on the Union market has increased from 76 % at the start of the period considered to 89 % at the end of the review investigation period. The positive evolution of sales volumes and market shares shows that current anti-dumping and anti-subsidy measures have had a positive effect for the Union industry.

4.4.2.3. Growth

- (180) Union consumption increased by 11 % over the period considered whilst both production volumes and sales increased by around 30 %. Also capacity utilisation increased by some 30 % while the capacity remained relatively stable with only a small increase. At the same time employment has increased (table 7 below) whilst the level of investment has decreased (table 11 below) during the period considered. Overall, it can be concluded that the Union industry is in a period of growth.

4.4.2.4. Employment and productivity

(181) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2011	2012	2013	RIP
Number of employees	2 123	2 125	2 351	2 326
<i>Index</i>	100	100	111	110
Productivity (metric tonnes/employee)	4 021	4 301	4 479	4 986
<i>Index</i>	100	107	111	124

Source: Data provided by EBB (the applicant)

- (182) The number of employees in the Union biodiesel industry remained stable in the beginning of the period considered but increased thereafter by 10 % from 2012 to the end of the review investigation period. This trend is fully in line with the trends for other injury indicators, such as production volumes and sales, and is an indication of the on-going recovery from past dumping and subsidisation that the Union industry is currently experiencing.
- (183) Since the increase in employment is proportionally smaller than the increased production of biodiesel, the productivity per employee has improved accordingly, by almost 25 % during the period considered, indicating that the Union industry is becoming a more efficient industry.

4.4.2.5. Magnitude of the subsidy margin and recovery from subsidisation

- (184) As mentioned above in recital (159) imports of biodiesel from the USA virtually ceased after the imposition of countervailing duties and there were virtually no subsidised imports from the USA during the review investigation period. Therefore, the magnitude of the subsidy margin cannot be assessed. However, the analysis of the injury indicators shows that the measures in place against the USA and the subsequent measures imposed against imports from Argentina and Indonesia have had a positive impact on the Union industry which is deemed to be recovering from the effect of past subsidisation albeit it is still in a fragile and vulnerable economic situation.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (185) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2011	2012	2013	RIP
Average unit sales price in the Union (EUR/metric tonne)	1 105	1 079	964	905
<i>Index</i>	100	98	87	82

	2011	2012	2013	RIP
Unit cost of production	1 107	1 153	969	868
<i>Index</i>	100	104	88	78

Source: Verified data from sampled Union producers

- (186) The average sales price in the Union has decreased steadily over the period considered whilst the unit cost of production has followed a similar trend. Since biodiesel is traded as a commodity, the Union industry has not been able to maintain a higher sales price but rather to decrease the price in line with reduced costs of production. Therefore, the Union industry has not been able to fully reap the benefits of lower raw material costs. On the other hand, the cost of production per unit has decreased slightly more than the average unit price which indicates an improved efficiency by the Union industry.

4.4.3.2. Labour costs

- (187) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour cost per employee

	2011	2012	2013	RIP
Average labour costs per employee (EUR)	60 866	59 081	60 802	61 807
<i>Index</i>	100	97	100	102

Source: Verified data from sampled Union producers

- (188) The average labour cost per employee has remained stable throughout the period considered.

4.4.3.3. Inventories

- (189) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2011	2012	2013	RIP
Closing stocks (metric tonnes)	84 734	118 256	92 825	91 202
<i>Index</i>	100	140	110	108
Closing stocks as a percentage of production	4 %	5 %	4 %	3 %
<i>Index</i>	100	125	100	75

Source: Verified data from sampled Union producers

(190) Stocks has remained relatively stable at a normal level during the period considered.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(191) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2011	2012	2013	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,0	– 1,4	1,1	3,8
<i>Index</i>	100	– 70	55	190
Cash flow (EUR)	67 930 517	1 004 296	135 656 898	66 832 681
<i>Index</i>	100	1	200	98
Investments (EUR)	12 122 366	9 859 293	9 133 725	8 314 180
<i>Index</i>	100	81	75	69
Return on investments (% on net sales)	14,0	– 14,2	12,5	44,2
<i>Index</i>	100	– 101	89	315

Source: Verified data from sampled Union producers

(192) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability has increased from 2,0 % in 2011 to 3,8 % by the end of the review investigation period. The profitability dropped however in 2012 to a loss (– 1,4 %) which was most likely due to the effect of significant amounts of dumped imports from Indonesia and Argentina, which replaced the imports that had previously been originating in the USA.

(193) The net cash flow is the ability of the Union producers to self-finance their activities. Whilst no clear trend can be established during the period considered, the sampled companies maintained over the period a positive cash-flow.

(194) During the period considered investments have decreased. However, in view of the positive cash-flow and the significant increase on the return of investments, as shown in the table above, there are no indications that Union industry would have encountered difficulties in raising capital or make further investments, should such investments have been required during the period considered.

(195) NBB claims that a profitability of 3,8 % is inconsistent with their own calculations, which were based on data from the non-confidential versions of the questionnaire replies of the sampled EU producers and indicated a profit margin of 8,5 %.

- (196) The Commission analysed this claim and found that NBB reached a different figure on the basis of a methodology/calculation which was flawed for several reasons. First, their calculations of the profitability for the IP was not based on questionnaire replies as alleged but on sampling data which, however, does not contain information relating to the IP but to a different period. Second, the cost of production that NBB used to calculate the profitability was based on a cost of production for a different sample of companies used in another investigation and cannot therefore simply be transposed to this investigation. Finally, the Commission established the average profit margin of the sampled companies on the basis of reliable and verified data of those companies. Therefore, NBB's claim is rejected.

4.4.4. Conclusion on injury

- (197) The analysis of the economic indicators shows that production and sales volumes have increased during the period considered whilst the Union consumption has only increased to a lesser extent. As a result the Union industry has increased its market share on the Union market. At the same time both sales prices and the cost of production have decreased at similar levels. This has prevented the Union industry from fully benefitting from the increased sales volumes despite a significant reduction of imports from third countries.
- (198) On the other hand, profitability has remained low during the period considered and the Union industry even suffered losses in 2012. Even the profits that were achieved during the review investigation period, just under 4 %, are significantly below the profit that the Union industry should reasonably achieve under normal market conditions. Also, Commission recalls that in the original investigation leading to the imposition of the existing measures the Council established the (target) profit that the Union industry should reasonably obtain under normal market conditions at 15 % ⁽²⁸⁾. In a subsequent investigation concerning imports of biodiesel originating in Argentina and Indonesia, the profit level that the Union industry should reasonably expect to achieve under normal market conditions were, however, slightly revised downwards mainly due to increased competition on the Union market and the maturity of the biodiesel industry in the Union and established at 11 % ⁽²⁹⁾.
- (199) Several of the economic indicators relevant for the analysis of the current state of the Union industry show a positive trend and hence indicate that the measures currently in place have had a positive effect on the Union industry. However, the profit level of the Union industry is still very low and significantly below the target profit as established in previous investigations. Moreover, the level of investment is low and also decreased during the period considered by 30 % and the capacity utilisation, albeit increasing, is still below 70 % compared to an utilisation rate of around 90 % when subsidised imports were absent from the Union market (2004-2006) and the Union industry was considered to be in a healthy situation ⁽³⁰⁾.
- (200) Based on an overall analysis of all economic indicators the Commission has concluded that Union industry has not yet fully recovered from the effects of past effects of subsidised imports. It is still in an economically and financially fragile situation and the current positive trend could easily be reverted should subsidised imports from the USA recur in significant volumes.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (201) To assess the likelihood of recurrence of injury to the Union industry should the existing measures be allowed to lapse, the Commission analysed the likely impact of imports from the USA on the Union market and on the Union industry pursuant to Article 18(2) of the basic Regulation. In particular, the Commission analysed the likelihood of recurrence of subsidised imports, the volumes and the likely price levels thereof, spare capacity, the attractiveness of the Union market and pricing behaviour of US producers.
- (202) As concluded above (recital (149)), it is likely that subsidised imports from the USA would recur should the existing measures be allowed to lapse. The Commission has established that producers of biodiesel in the USA are currently exporting biodiesel to other third country markets at price levels that are below the Union prices. Since the Union prices are higher than those in other third country markets it is likely that at least some of those exports may be re-directed to the Union should the existing measures lapse.

⁽²⁸⁾ Regulation (EC) No 598/2009, recitals (176)-(178).

⁽²⁹⁾ Implementing Regulation (EU) No 1194/2013, recitals (202)-(208).

⁽³⁰⁾ Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

- (203) The Commission has established that US producers have a large spare capacity amounting to around 2 678 000 tonnes equivalent to around 22 % of the total Union consumption.
- (204) The spare capacity available in the USA is not likely to be absorbed by its domestic market. Already today, despite sufficient capacity, US producers are not supplying the full demand on the US market. It is also unlikely that the existing spare capacity would be used to increase exports to third countries other than the Union. Currently, as described in detail in recitals (161) above, the US export prices to third countries are on average 15 % below the average domestic price on the US market and also below the average Union price even where transportation costs from the USA to the Union are taken into account. It is therefore likely that US producers would seek another outlet for their spare capacity.
- (205) Given that the Union market is the biggest market for biodiesel worldwide and with biodiesel prices in the Union that are in parity or slightly above the price level on the US domestic market, the Union market would be very attractive for US producers of biodiesel. Indeed, historically, that has proven to be the case.
- (206) It is therefore very likely that US producers would use a large part of their spare capacity to re-enter the Union market should the existing measures be allowed to lapse. Given their current pricing behaviour on other export markets and the large spare capacity available it is very likely that significant volumes of US biodiesel would re-enter the Union market at a subsidised price equal to, or below the Union prices.
- (207) Such imports would exercise a significant downward price pressure on Union industry, which at current price levels, is only making a very small profit, which is significantly below its target profit. This would most likely result in a decrease of production and sales volumes, less profitability and loss of market share.
- (208) Given the fragile economic situation of the Union industry, such likely scenario would have a significant adverse effect on the ongoing recovery of the Union industry and would in all likelihood cause recurrence of material injury.

5.1. Conclusion

- (209) On the basis of the above, the Commission has concluded that material injury to the Union industry would most likely recur should the existing countervailing duties against imports of biodiesel from the USA be allowed to lapse.

6. UNION INTEREST

- (210) In accordance with Article 31 of the basic Regulation, the Commission examined whether it would be against the Union interest to maintain the existing measures despite the findings above on the likely recurrence of injurious subsidisation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and importers as well as users of biodiesel.

6.1. Interest of the Union industry

- (211) The existing measures have contributed to an almost total reduction of subsidised imports of biodiesel from the USA and offered relief to the Union industry. While the Union industry has shown positive signs of recovery from past subsidisation, such as increased production and sales volume, biodiesel prices on the Union market have decreased significantly and the profitability has remained very low, thus leaving the industry in a fragile and vulnerable economic situation.
- (212) If the existing measures were allowed to lapse, the Union industry would most certainly be faced with increased unfair competition in the form of significant volumes of subsidised imports of biodiesel from the USA. This would put a halt to the on-going recovery which the Union biodiesel industry is currently experiencing and most likely result in the recurrence of material injury. Terminating the measures is therefore not in the interest of the Union industry.

6.2. Interest of unrelated importers and traders

- (213) Only three importers/traders came forward and made their views known. Whilst one company claimed that the level of current duties is disproportionate and that an extension thereof would distort and limit the market resulting in higher prices, the other two companies claimed that the existing measures had not affected their activities and were neutral as to a possible extension of the existing countervailing duties.
- (214) The findings of this investigation do not support the argument that a continuation of the existing measures would limit the market and result in higher prices. On the contrary, during the period considered, Union prices have decreased despite the existence of measures. In addition, the Union industry has today sufficient capacity to supply Union demand for biodiesel and also spare capacity to satisfy a future increase in demand. Therefore, the arguments put forward do not provide evidence that the continuation of existing measures would be against the interest of importers and/or traders.

6.3. Interest of users

- (215) Only one user, an oil company which purchases biodiesel to blend with mineral oils, came forward and make their view known to the Commission. It was strongly in favour of maintaining the existing measures and claimed that their removal could have devastating effects on the Union biodiesel market leading to an in-flux of significant volumes of subsidised biodiesel which would result in a recurrence of severe injury to the Union biodiesel industry.
- (216) There are no indications that the existing measures have negatively affected the Union users of biodiesel, and notably, there is no evidence that the existing measures have had an adverse effect of their profitability or business. In any event, due to the stable or only slightly increase in consumption of biodiesel in the Union, the Union industry has enough capacity to satisfy current and future demand should the demand further increase. Maintaining the measures would not lead to a lack of supply.
- (217) It can therefore be concluded that maintaining the measures would not be against the interest of users.

6.4. Conclusion on Union interest

- (218) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain the existing measures on imports of biodiesel originating in the USA.

7. COUNTERVAILING MEASURES

- (219) In view of the conclusions reached with regard to the likelihood of continuation or recurrence of subsidisation and injury, it follows that, in accordance with Article 18(1) of the basic Regulation, the countervailing duties applicable to imports of biodiesel originating in the USA, imposed by Regulation (EC) No 598/2009, as amended by Implementing Regulation (EU) No 443/2011, should be maintained for an additional period of five years.
- (220) As outlined in recital (2) above, the countervailing duties in force on imports of biodiesel from the USA were extended to cover also imports of the same product consigned from Canada, whether declared as originating in Canada or not, and to imports into the Union 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.
- (221) The countervailing duties to be maintained shall continue to be extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not as well as to 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.

(222) The exporting producers from Canada that were exempted from the measures, as extended by Implementing Regulation (EU) No 443/2011, shall also be exempted from the measures imposed by this Regulation.

(223) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed 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, originating in the USA, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 15 (TARIC code 2710 20 15 29), ex 2710 20 17 (TARIC code 2710 20 17 29), 3824 90 92 (TARIC code 3824 90 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 39, 3826 00 10 49, 3826 00 10 99) and ex 3826 00 90 (TARIC code 3826 00 90 19).

2. The rates of the definitive countervailing duty applicable to the, net free-at Union frontier price, before duty, of the product described in paragraph 1, and manufactured by the companies listed below, shall be a fixed amount as follows:

Company	Countervailing duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	237,0	A933
Cargill Inc., Wayzata	213,8	A934
Green Earth Fuels of Houston LLC, Houston	213,4	A935
Imperium Renewables Inc., Seattle	216,8	A936
Peter Cremer North America LP, Cincinnati	211,2	A937
Vinmar Overseas Limited, Houston	211,2	A938
World Energy Alternatives LLC, Boston	211,2	A939
Companies listed in Annex I	219,4	See Annex I
All other companies	237,0	A999

The countervailing duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145 paragraphs 2 and 3 of Commission Regulation (EEC) No 2454/93 ⁽³¹⁾, the amount of countervailing duty laid down in paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.
4. The application of the individual duty rate specified for the companies listed in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.
5. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 2

1. The definitive countervailing duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is extended to imports into the Union 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, consigned from Canada, whether declared as originating in Canada or not, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 15 (TARIC code 2710 20 15 21), ex 2710 20 17 (TARIC code 2710 20 17 21), ex 3824 90 92 (TARIC code 3824 90 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 30, 3826 00 10 40, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 598/2009, which is a definitive countervailing duty of EUR 237 per tonne net.

The countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3 of Regulation (EEC) No 2454/93, the amount of countervailing duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.
3. The application of exemptions granted to the companies listed in paragraph 1 or authorised by the Commission in accordance with Article 5(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the countervailing duty as imposed by paragraph 1 shall apply.
4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

⁽³¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

Article 3

1. The definitive countervailing duty as set out in Article 1, paragraph 2, is hereby extended to imports into the Union 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 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, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 43 (TARIC code 2710 19 43 30), ex 2710 19 46 (TARIC code 2710 19 46 30), ex 2710 19 47 (TARIC code 2710 19 47 30), ex 2710 20 11 (TARIC code 2710 20 11 30), ex 2710 20 15 (TARIC code 2710 20 15 30), ex 2710 20 17 (TARIC code 2710 20 17 30), ex 3824 90 92 (TARIC code 3824 90 92 20), ex 3826 00 90 (TARIC code 3826 00 90 30).

The countervailing duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3 of Regulation (EEC) No 2454/93, the amount of the countervailing duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

3. The application of the individual duty rate specified for the companies listed in Article 1, paragraph 2, shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex III. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 4

1. Requests for exemption from the duty extended by Article 2(1) and Article 3(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: Rue de la Loi 170, CHAR 04/034
1049 Brussels
BELGIUM
e-mail: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 23(6) of Regulation (EC) No 597/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Regulation (EC) No 598/2009, from the duty extended by Article 2(1) and Article 3(1).

Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 14 September 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX I

Company Name	City	TARIC additional code
AC & S Inc.	Nitro	A941
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
American Made Fuels, Inc.	Canton	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
BioPur Inc.	Bethlehem	A941
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels LLC	Tulsa	A940
ED&F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels Inc.	Madison	A940
Freedom Fuels LLC	Mason City	A941

Company Name	City	TARIC additional code
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel LP (BioSelect Fuels)	Houston	A940
GeoGreen Fuels LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents Inc.	Salt Lake City	A940
Incobrasa Industries Ltd	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels Inc.	Newark	A940
Integrity Biofuels	Morristown	A941
Iowa Renewable Energy LLC	Washington	A940
Johann Haltermann Ltd	Houston	A940
Lake Erie Biofuels LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries LLC	Claypool	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
Natural Biodiesel Plant LLC	Hayti	A941
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940

Company Name	City	TARIC additional code
Nova Biofuels Clinton County LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels Ltd	Houston	A940
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Piedmont Biofuels Industrial LLC	Pittsboro	A941
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
Prairie Pride	Deerfield	A941
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940
Red River Biodiesel Ltd	New Boston	A940
REG Ralston LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Seminole Biodiesel	Bainbridge	A940
Southeast BioDiesel LLC	Charlotte	A941
Soy Solutions	Milford	A940
SoyMor Biodiesel LLC	Albert Lea	A940
Stepan Company	Northfield	A941
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940

Company Name	City	TARIC additional code
U.S. Biofuels Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel LLC	Farley	A940
Western Iowa Energy LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940
Yokaya Biofuels Inc.	Ukiah	A941

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(2), Article 2(2) or Article 3(2):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration:

'I, the undersigned, certify that the (volume) 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 sold for export to the European Union covered by this invoice was manufactured by [company name and address (TARIC additional code)] in [countr[y]ies concerned]. I declare that the information provided in this invoice is complete and correct.'

ANNEX III

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 3(3):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration:

'I, the undersigned, certify that the (volume) 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 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in the United States of America. I declare that the information provided in this invoice is complete and correct.'

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1267**of 29 July 2021****imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ and in particular Article 18(1) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and 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 under 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), ex 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 original measures'. The investigation that led to the imposition of the original measures will hereafter be referred to as 'the original investigation'.
- (2) By Implementing Regulation (EU) No 443/2011 ⁽³⁾, following an anti-circumvention investigation, the Council extended the definitive anti-countervailing imposed by Council Regulation (EC) No 598/2009 to imports 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 Council 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 USA.
- (3) By Implementing Regulation (EU) 2015/1519 ⁽⁴⁾, the European Commission re-imposed the definitive countervailing measures on imports of biodiesel originating in the USA following an expiry review (the 'previous expiry review').

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 1).

⁽³⁾ 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 (OJ L 122, 11.5.2011, p. 1).

⁽⁴⁾ 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 (OJ L 239, 15.9.2015, p. 99).

- (4) Moreover, Regulation (EU) 2015/1519 as amended by Regulation (EU) 2016/675 ⁽⁵⁾ also extended the definitive countervailing duty to imports 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, both located in Ontario, Canada as well as by the company DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada. By the same Regulation, the European Commission also extended the definitive countervailing duty 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 USA.
- (5) The countervailing duties currently in force are fixed amounts ranging from EUR 211,2 to EUR 237 per tonne net on imports from the exporting producers.

1.2. Request for an expiry review

- (6) Following the publication of a notice of impending expiry ⁽⁶⁾ the European Commission ('the Commission') received a request for a review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation').
- (7) The request for review was lodged on 11 June 2020 by the European Biodiesel Board ('EBB' or 'the applicant'), on behalf of Union producers representing more than 25 % of the total Union production of biodiesel. The request for review was based on the grounds that the expiry of the measures would likely result in continuation or recurrence of subsidised biodiesel entering the Union and of recurrence of injury to the Union industry.

2. INITIATION OF AN EXPIRY REVIEW

- (8) Having determined, after consulting the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁷⁾ that sufficient evidence existed for the initiation of an expiry review, the Commission initiated, on 14 September 2020, an expiry review with regard to imports of biodiesel originating in the USA on the basis of Article 18(1) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁸⁾ ('the Notice of Initiation').
- (9) On the same day, 14 September 2020, the Commission initiated in parallel an expiry review of the anti-dumping measures in force on imports of biodiesel originating in the USA.
- (10) The Government of Canada commented on this initiation, noting that, if the measures were to be maintained, the exemption granted to three Canadian producers of biodiesel should be retained. The Commission maintained the exemption in Article 2 of the present Regulation.

2.1. Review investigation period and period considered

- (11) The investigation of a continuation or recurrence of subsidisation covered the period from 1 July 2019 to 30 June 2020 ('the review investigation period' or 'the RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

⁽⁵⁾ Commission Implementing Regulation (EU) 2016/675 of 29 April 2016 amending Implementing Regulation (EU) 2015/1519 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 (OJ L 116, 30.4.2016, p. 27).

⁽⁶⁾ Notice of the impending expiry of certain anti-subsidy measures (OJ C 18, 20.1.2020, p. 19).

⁽⁷⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

⁽⁸⁾ Notice of initiation of an expiry review of the anti-subsidy measures applicable to imports of biodiesel originating in the United States of America (OJ C 303, 14.9.2020, p. 7).

2.2. Withdrawal of the United Kingdom from the EU

- (12) This case was initiated on 14 September 2020, that is during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. This period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (13) By a note to the case file ⁽⁹⁾ on 15 January 2021, the Commission invited UK operators that considered that they still qualified as interested parties to contact it. BP OIL International Limited and Argent Energy requested to continue to be considered as interested parties and were granted this right based on the evidence submitted. In particular, both companies provided proof of the existence of related entities within the respective group active on the Union market. On the other hand, the UK parent company Valero Energy Limited was replaced by its Irish subsidiary Valero Energy Limited Ireland since the latter one is active on the Union market.

2.3. Interested parties

- (14) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known producers in the USA and the US authorities, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.
- (15) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2.4. Sampling

- (16) In the Notice of Initiation, the Commission stated that it might use sampling in accordance with Article 27 of the basic Regulation.

Sampling of Union producers

- (17) On 14 September 2020, the Commission notified to interested parties the provisional sample of Union producers pursuant to Section 5.3 of the Notice of Initiation. It selected the sample on the basis of the size of the production and sales volume of the like product in 2019 as well as the geographic location of the producers of the like product. This sample consisted of three Union producers. The sampled Union producers accounted for 17,5 % of the estimated total production volumes of the like product in the Union and it also ensures a good geographical spread. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline of 7 days of the notification of the provisional sample of Union producers.

Sampling of importers

- (18) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (19) Only one unrelated importer, Shell Trading Rotterdam BV, provided the requested information and, consequently, the Commission decided that sampling was not necessary.

Sampling of exporting producers

- (20) In order to decide whether sampling was 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, it asked the authorities of the exporting country to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

⁽⁹⁾ Tron document: t21.000417.

- (21) Three exporting producers in the USA came forward and expressed their willingness to cooperate with the Commission in the investigations. In view of the low number, it decided that sampling was not necessary and all three companies were invited to submit a questionnaire reply.

2.5. Cooperation from the country concerned

- (22) On 15 October 2020, one of the originally cooperating companies sent an email to the Commission informing that it would not cooperate further. Moreover, the other two other companies did also not provide the requested information within the required deadline by completing and returning the questionnaire replies.
- (23) On 10 November 2020, the Commission sent a letter informing all three companies about its intention to apply Article 28 of the basic Regulation and base the findings of the investigation on facts available. The US authorities were also informed about this intention. The deadline for providing comments to the letter was 17 November 2020. No comments were received.
- (24) Moreover, at the initiation, by Note Verbale dated 14 September 2020, the Commission requested the authorities of the USA to complete and return the anti-subsidy questionnaire intended for the Government of USA. It did not receive a reply within the required deadline.
- (25) On 10 November 2020, the Commission sent a Note Verbale informing the US authorities about its intention to apply Article 28 of the basic Regulation and base the findings of the investigation on facts available given its lack of cooperation.
- (26) The deadline for providing comments to the Note Verbale was 17 November 2020. No comments were received.
- (27) The Commission therefore concluded that neither any exporting producer nor the Government of USA cooperated in the expiry review investigation. As a consequence, it decided to apply the provisions of Article 28 of the basic Regulation and base its findings, affirmative or negative, on the facts available.

2.6. Questionnaires

- (28) At the initiation, a copy of the questionnaires was made available in the file for inspection by interested parties and on DG Trade's website.
- (29) Questionnaire replies were received from the three sampled Union producers as well from an unrelated Union importer.

2.7. Verification

- (30) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 26 of the basic Regulation. The Commission instead cross-checked remotely all the information deemed necessary for its determination in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ⁽¹⁰⁾. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Union producers

- SAIPOL Bu Diester, France
- CAMPA Iberia S.A.U., Spain
- VERBIO Vereinigte BioEnergie AG, Germany

Importers

- Shell Trading Rotterdam BV, The Netherlands

⁽¹⁰⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

2.8. Disclosure

- (31) On 21 May 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the countervailing duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (32) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

3. PRODUCT CONCERNED AND LIKE PRODUCT

3.1. Product concerned

- (33) The product concerned is the same as in the original investigation and previous expiry review namely 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, originating in the USA, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 16 (TARIC code 2710 20 16 29), ex 3824 99 92 (TARIC code 3824 99 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 59, 3826 00 10 99), ex 3826 00 90 (TARIC code 3826 00 90 19) ('the product concerned').
- (34) Biodiesel is a renewable fuel produced from a wide range of raw materials, i.e. vegetable oils such as rapeseed oil, soybean oil, palm oil, used frying oils (UFO), animal fats or biomass.
- (35) Biodiesel is used in the transport sector, mainly blended with mineral diesel (i.e. petroleum/conventional diesel) and very marginally in its pure form (B100).

3.2. Like product

- (36) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and [technical] characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the USA; and
 - the product produced and sold in the Union by the Union industry.
- (37) These products are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3.3. Claims regarding product scope

- (38) The Swedish company Preem AB and Valero Energy Ltd Ireland, fuel producers and suppliers and as such users of the product concerned, argued that Fatty Acid Methyl Ester (FAME) biodiesel and Hydrotreated Vegetable Oil (HVO) biodiesel are two different types of biodiesel, and that HVO should be excluded from the current product scope. In the 2009 Regulation imposing provisional measures ⁽¹⁾, all types of biodiesel and biodiesel blends were considered to be biodiesel fuels. FAME and HVO can both be blended with diesel and despite some differences in physical characteristics, the product end-use is the same and both products are produced by the Union industry. In addition, the complaint in the original investigation explicitly defined diesel fuel produced from HVOs as part of the product concerned and no party challenged this statement at that time. Therefore, the claim was rejected.

⁽¹⁾ Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

4.1. Preliminary remarks

- (39) In accordance with Article 28(1) of the basic Regulation, the Commission examined whether the expiry of the existing measures would likely lead to a continuation or recurrence of subsidisation of the product concerned originating in the USA and a continuation or recurrence of injury to the Union industry. Due to the lack of cooperation from the exporting producers and from the US authorities as described in recitals (22) to (27) above, it was not possible to carry out an analysis based on verified data supplied by the exporting producers and by the US authorities.
- (40) Consequently, in accordance with Article 28 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of subsidisation were based on facts available. The Commission made use of the following sources of information: the request for an expiry review and subsequent submissions from the applicant, Eurostat, the Global Trade Atlas ('GTA') and the websites of the US Energy Information Administration ('EIA') and the US Department of Agriculture ('USDA').
- (41) In particular, the Commission analysed the following Federal and State subsidy schemes, which were identified in the request for review and which the Commission identified as still active.

Federal Schemes

- (a) The Biodiesel Mixture Credit and the Biodiesel Credit
- (b) The Small Agri-biodiesel Producer Income Tax Credit
- (c) The USDA bioenergy programme for advanced biofuels
- (d) Credit for Production of Cellulosic Biofuel
- (e) USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Programme

State Schemes

- (a) Iowa – The Iowa Biodiesel Producer Tax Refund
 - (b) Kentucky – The Kentucky Biodiesel Production Tax Credit
 - (c) Texas – The Texas Fuel Ethanol and Biodiesel Production Incentive Programme
- (42) On the other hand, due to the lack of cooperation by the US authorities and US exporting producers, and in view of the conclusions as regards continuation of subsidisation on the basis of the schemes mentioned above, the Commission did not further analyse the following Federal and State subsidy schemes.

Federal Schemes

- (a) Second Generation Biofuel Plant Depreciation Special Allowance
- (b) Rural Energy for America Program

State Schemes

- (a) Alabama Biofuel Production Jobs Tax Credit
- (b) Hawaii Renewable Fuels Production Tax Credit
- (c) Kentucky Alternative Fuel Production Tax Incentives
- (d) Louisiana Provision for Green Jobs Tax Credit
- (e) Minnesota Biofuel Production Grant Program
- (f) Montana Alternative Fuel and Vehicle Production Property Tax Incentive
- (g) New York Biofuel Production Tax Credit

- (h) North Dakota Biodiesel Production Equipment Tax Credit
- (i) North Dakota Biofuel Loan Program
- (j) Oregon Alternative Fuel Loans
- (k) South Carolina Biofuels Production Facility Tax Credit
- (l) Virginia Green Jobs Tax Credit

4.2. Subsidisation – Federal Schemes

4.2.1. Biodiesel mixture credit and biodiesel credit

4.2.1.1. Legal basis

- (43) Title 26, Section 40A (b) of the US Code (U.S.C.) is the legal basis for a tax credit scheme for biodiesel blenders, retailers and end-users. They provide for the following biodiesel fuel credits:
- (1) The Biodiesel Mixture Credit;
 - (2) The Biodiesel Credit;
 - (3) The Small Agri-biodiesel Producer Credit.
- (44) The Biodiesel Mixture Credit has been in place in the US Federal legislation since 2005 ⁽¹²⁾. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this tax credit was due to expire on 31 December 2009 ⁽¹³⁾. However, this subsidy scheme has never truly expired, but has instead been repeatedly reinstated retroactively until now. Lastly, on 20 December 2019 by the Further Consolidated Appropriations Act the U.S. Congress reinstated the scheme for two years as from 31 December 2017 and prolonged it for 3 years, that is until 31 December 2022 ⁽¹⁴⁾. This 5-year extension is the longest extension made since the introduction of this subsidy scheme.
- (45) Following disclosure, the applicant informed the Commission that a bill has been introduced on 25 May 2021 in both the U.S. Senate and the U.S. House of Representatives with a view to extending the Biodiesel Mixture Credit Scheme further for an additional 3 years, i.e. until 31 December 2025.
- (46) Like the Biodiesel Mixture Credit the Biodiesel Credit has been in place in the US Federal legislation since 2005 ⁽¹⁵⁾. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this tax credit was due to expire on 31 December 2009 ⁽¹⁶⁾. However, also this subsidy scheme has never expired and have been repeatedly reinstated retroactively until now. Lastly, on 20 December 2019 by the Further Consolidated Appropriations Act the U.S. Congress scheme reinstated the scheme for two years as from 31 December 2017 and prolonged it for 3 years, that is until 31 December 2022 ⁽¹⁷⁾.
- (47) The Small Agri-biodiesel Producer Income Tax Credit is a tax credit, which applies only to small agri-biodiesel producers. This scheme is examined in recitals (63) to (70) below.

4.2.1.2. Eligibility

- (48) In order to be eligible for the Biodiesel Mixture Credit referred to in recital (43) (1) above, a company must create a mixture of biodiesel and diesel fuel, which is sold as a fuel or for use as a fuel.

⁽¹²⁾ Established in 2005 by the American Jobs Creation Act of 2004, §302 (P.L. 108-357), extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58).

⁽¹³⁾ See Section 202(a) of the Energy Improvement and Extension Act 2008 (P.L. 110-343, Division B).

⁽¹⁴⁾ Public Law 116-94—Dec. 20, 2019 Further Consolidated Appropriations Act, 2020, Section 121.

⁽¹⁵⁾ Established in 2005 by the American Jobs Creation Act of 2004, §302 (P.L. 108-357), extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58).

⁽¹⁶⁾ See Section 202(a) of the Energy Improvement and Extension Act 2008 (P.L. 110-343, Division B).

⁽¹⁷⁾ Public Law 116-94—Dec. 20, 2019 Further Consolidated Appropriations Act, 2020, Section 121.

- (49) The person claiming the incentive must obtain a certification from the producer or importer of biodiesel, which identifies the product and the percentage of biodiesel and agri-biodiesel ⁽¹⁸⁾ in the product. This credit takes the form of an excise tax credit or, if a company's excise tax liability is less than the total excise tax credit, the company may then claim the residual credit as a refundable income tax credit. A refundable income tax credit is a credit against the taxpayer's income taxes or a direct payment. It is refundable because the excess credit can be disbursed to the taxpayer as a direct cash payment if the credit is greater than the individual's tax liability.
- (50) The Biodiesel Credit referred to in recital (43) (2) above is a non-refundable income tax credit for retailers or end-users of unmixed neat (pure) biodiesel. The neat biodiesel credit is available only to the person who places neat biodiesel into the fuel tank of a vehicle or uses it as fuel. It should be noted that also biodiesel producers, producing their own biodiesel, would be able to receive this credit. Thus to claim the credit, the biodiesel producer must be acting as either a retailer (putting the gallon of biodiesel into the end-user's gas tank) or an end-user (e.g. putting the biodiesel into his own vehicles).

4.2.1.3. Practical implementation

- (51) Biodiesel that is mixed with diesel fuel is entitled to an excise tax credit, or an income tax credit. During the review investigation period, the credit prevailing was USD 1 per gallon for all types of biodiesel, i.e. including agri-biodiesel and diesel from biomass.
- (52) The final tax credit for the blended fuel depends on the proportion of biodiesel it contains. The minimum requirement, and what is the most common practice, is to add 0,1 % mineral diesel to 99,9 % biodiesel (this blended product is referred to as B99 in the USA), as this ensures that the maximum tax credit is obtained. The proportion of biodiesel in a blended product qualifies for the tax credit (e.g. 100 gallons of B99 will contain 99,9 gallons of biodiesel and be eligible for a tax credit of USD 99,90). The conversion of biodiesel from a pure product (B100) to a mixed product (B99) is a simple process. It implies the addition of 0,1 % of mineral diesel into pure biodiesel and does not entail a major transformation of the product concerned. It is the activity of blending that triggers the eligibility for the credit.
- (53) The producers of biodiesel can claim the incentive when they are themselves performing a blending activity. The producer must blend the neat biodiesel with diesel fuel. In terms of entitlement to the incentive, there are no differences between blended biodiesel destined for domestic sale and sale for export.
- (54) Companies that do not produce but rather purchase pure biodiesel and blend it into a biodiesel mixture are also entitled to the tax credit. Such companies must obtain a certificate from the producer or the importer (and if applicable any intervening resellers) of the biodiesel in which the producer effectively certifies not to have claimed the tax credit ⁽¹⁹⁾.
- (55) The incentive can be claimed either as a credit against excise or income tax liability or as a direct cash payment. The total amount of the incentive remains the same (USD 1 per gallon) whether the incentive is claimed as an excise tax credit, an income tax credit, a direct payment to the taxpayer, or any combination of the foregoing.
- (56) The U.S.C. provides that the biodiesel mixture credit will not be granted unless the company (blender) that makes the mixture of biodiesel and mineral diesel obtains a certificate ('Certificate for Biodiesel') from the producer of the biodiesel in which the producer certifies, inter alia, the quantity of biodiesel to which the certificate relates and whether the biodiesel is agri-biodiesel or biodiesel other than agri-biodiesel.

⁽¹⁸⁾ According to the US law, the term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats (Title 26, Section 40A (d)(2) of the US Code).

⁽¹⁹⁾ <https://www.law.cornell.edu/uscode/text/26/40A>

- (57) In regard to the Biodiesel Credit, and similar to the previous expiry review, the retailer (or a biodiesel producer acting as a retailer) or end-user of unblended biodiesel can claim USD 1,00 per gallon for all types of unmixed (neat) biodiesel placed into the fuel tank of a vehicle or used as fuel. A non-refundable general business credit is a credit against the business's income tax. It is non-refundable because, if the business's credits are greater than its tax liability, the excess credit cannot be disbursed to the business as a direct cash payment.
- (58) Given that biodiesel producers are eligible for these schemes and on the basis of facts available ⁽²⁰⁾ (since there was no cooperation as – indicated in recital (27) above), the Commission concluded that the US exporting producers benefited from it.

4.2.1.4. Conclusion

- (59) The Biodiesel Mixture Credit as well as the Biodiesel Credit have to be regarded as a fiscal incentive whether or not they are given as a cash payment (only possible for Biodiesel Mixture Credit) or has to be offset against tax liabilities (applicable to both tax credits).
- (60) The Commission found, in line with its findings in the original investigation, the schemes to constitute a subsidy in the sense of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the basic Regulation as the schemes provides a financial contribution by the Government of the USA in the form of direct grants (cash payments, only possible for the biodiesel mixture credit) and revenue foregone which is otherwise due (tax offset) (applicable to both tax credits). The incentives confer a benefit on the companies receiving them.
- (61) The schemes are limited to companies that are involved in the biodiesel industry and are therefore considered to be specific under Article 4(2)(a) of the basic Regulation and thus countervailable.
- (62) Finally, as the Biodiesel Mixture Credit scheme provides for a subsidy of USD 1 per gallon for all types of biodiesel, the Commission considered that this scheme provided significant amount of subsidies to the US biodiesel exporting producers and remained by far the most important scheme during the review investigation period. Such a subsidy of USD 1 per gallon would amount to about EUR 302 per tonne.

4.2.2. *Small Agri-biodiesel Producer Income Tax Credit*

4.2.2.1. Legal basis

- (63) Title 26, U.S.C., Section 40A also provides for a Small Agri-biodiesel Producer Income Tax Credit, like the Biodiesel Mixture Credit and the Biodiesel Credit.
- (64) Moreover, similar to the Biodiesel Mixture Credit and the Biodiesel Credit, as laid down in the recitals (44) and (46), the Small Agri-biodiesel Producer Income Tax Credit has been in place in the US Federal legislation since 2005 ⁽²¹⁾. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this tax credit was due to expire on 31 December 2009 ⁽²²⁾. However, this subsidy scheme has never expired but have been repeatedly reinstated retroactively. Lastly, on 20 December 2019 by the Further Consolidated Appropriations Act the U.S. Congress scheme reinstated the scheme for two years as from 31 December 2017 and prolonged it for 3 years, that is until 31 December 2022.

4.2.2.2. Eligibility

- (65) This scheme is only available to small producers of neat agri-biodiesel. Any mixer, blender, or trader who purchases but does not produce biodiesel is not eligible for the credit. A small producer is any person whose production capacity is not more than 60 million gallons of agri-biodiesel per year.

⁽²⁰⁾ See Sections 3.1.1.1 and 3.1.1.2 of the request for review.

⁽²¹⁾ Energy Policy Act of 2005, §1345 (P.L. 109-58); amended by the Energy Improvement and Extension Act of 2008 (P.L. 110-343, Division B), §202-203; extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), §701.

⁽²²⁾ See Section 202(a) of the Energy and Improvement and Extension Act 2008 (P.L. 110-343, Division B).

- (66) The small agri-biodiesel producer can claim a USD 0,10 non-refundable general business income tax credit for each gallon of agri-biodiesel produced. The qualified production of a producer may not exceed 15 million gallons in any taxable year. For the producer to claim the credit, the agri-biodiesel must be used as a fuel, sold for use as a fuel, or used to create a mixture of biodiesel and diesel fuel that is used as a fuel or sold for use as a fuel. Thus small agri-biodiesel producers can combine this scheme with the biodiesel mixture credit scheme and thus receive altogether USD 1,10 per gallon. By contrast, big agri-biodiesel producers are eligible only for the biodiesel mixture credit scheme.

4.2.2.3. Practical implementation

- (67) Claims for the non-refundable general business income tax credits are made annually when the claimant is making its income tax return. The credit for each gallon of biodiesel produced by the claimant during the relevant tax year, up to a maximum of 15 million gallons, is offset against the claimant's liability for corporate income tax. If the claimant's tax liability is less than the amount of credit claimed, the excess amount can be carried forward to subsequent tax years.
- (68) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽²³⁾ (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.

4.2.2.4. Conclusion

- (69) The Commission found, in line with its finding in the original investigation, 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 Government of the USA in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.
- (70) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and thus countervailable.

4.2.3. The USDA Bioenergy Programme for Advanced Biofuel

4.2.3.1. Legal basis

- (71) The US Department of Agriculture ('USDA') Bioenergy Programme for Advanced Biofuel (BPAB) is governed by Title IX, Section 9005 of the Farm Security and Rural Investment Act of 2002 (the '2002 Farm Bill') and is currently codified under Title 7, Section 8105 of the US Code.
- (72) The programme was scheduled to expire in 2012, but was extended in 2013 ⁽²⁴⁾ and subsequently in 2014 ⁽²⁵⁾. In this respect, the Agriculture Act of 2014 extended the programme for another 5 years, until the end of 2018. More recently, the Agricultural Improvement Act dated 20 December 2018 extended this subsidy programme for another five years, i.e. until the end of 2023 ⁽²⁶⁾.

⁽²³⁾ See Section 3.1.1.3 of the request for review.

⁽²⁴⁾ American Taxpayer Relief Act of 2 January 2013 (Public law 112-240, §701(f)(4)).

⁽²⁵⁾ Agricultural Act of 7 February 2014 (Public law 113-79, §9005(2)).

⁽²⁶⁾ Agriculture Improvement Act of 2018 (Public law 115-334), §9005(2)(B).

4.2.3.2. Eligibility

- (73) This programme provides direct grants to producers of advanced biofuels, which are generally defined as 'fuel derived from biomass other than corn kernel starch'. The definition includes diesel produced from biomass ⁽²⁷⁾. No more than five per cent of the programme's funds may be distributed to eligible producers with a refining capacity exceeding 150 million gallons of advanced biofuel per year. Blenders are not eligible for the programme.

4.2.3.3. Practical implementation ⁽²⁸⁾

- (74) Participants receive direct payments from the government after having applied for the programme. Producers have to register first with the authority and sign a contract. The producers must submit payment applications for each quarter of the fiscal year in order to receive payment for that quarter's production of advanced biofuel. Payments are provided for both actual production and incremental production. Actual production payments are calculated quarterly for the amount of actual advanced biofuel produced each quarter.
- (75) Incremental production payments are made for the quantity of eligible advanced biofuel produced in a fiscal year that exceeded the quantity produced in the prior fiscal years (since 2009).
- (76) The funding is divided among all producers who come forward based on the Btu ⁽²⁹⁾ value of the production. The funding is distributed evenly among all producers depending on Btu value.
- (77) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³⁰⁾ (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.

4.2.3.4. Conclusion

- (78) The Commission considered that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of a direct grant. The incentive confers a benefit on the companies receiving them.
- (79) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and thus countervailable.

4.2.4. *Credit for Production of Cellulosic Biofuel*

4.2.4.1. Legal basis

- (80) The programme exists since 1 January 2009 and was established by the Food, Conservation, and Energy Act of 2008 and is administered by the Internal Revenue Service. It is codified under Title 26, Section 40 (b)(6) of the US Code.
- (81) This subsidy was originally supposed to expire on 31 December 2012. However, it was extended several times and, lastly, by the Further Consolidated Appropriations Act of 20 December 2019 until 1 January 2021.

⁽²⁷⁾ See Code of Federal Regulations (CFR), Title 7 Part 428.102 of the US Code, 'Definitions' of the implementing regulations: 'Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat'. Potentially 'biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste' could also include production of biodiesel.

⁽²⁸⁾ https://www.rd.usda.gov/sites/default/files/fact-sheet/508_RD_FS_RBS_AdvancedBioFuel.pdf

⁽²⁹⁾ The British thermal unit (BTU or Btu) is a unit of energy equal to about 1055 joules.

⁽³⁰⁾ See Section 3.1.1.4 of the request for review.

4.2.4.2. Eligibility

- (82) This scheme provides for USD 1,01 per gallon non-refundable general business income tax credit to second generation biofuel used as fuel or sold for use as fuel. Producers are eligible, including producers of biofuel derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, as well as algae-based fuels.

4.2.4.3. Practical implementation

- (83) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³¹⁾ (since there was no cooperation as in indicated in recital (28) 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.
- (84) Moreover, it is expected that the cellulosic biofuels will constitute a significant part of US production in the future as demonstrated by the ongoing several projects that aims at developing cellulosic diesel capacities ⁽³²⁾.

4.2.4.4. Conclusion

- (85) The Commission considered that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the USA in the form of a direct grant. The incentive confers a benefit on the companies receiving them.
- (86) The scheme is limited to companies that produce biofuel derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, as well as algae-based fuels. It is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

4.2.5. *The USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Programme*

4.2.5.1. Legal basis

- (87) The USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Programme is provided under Title 7, Section 8103 (Biorefinery assistance) of the U.S. Code and is administered by the U.S. Department of Agriculture (USDA).
- (88) The same programme was called 'Advanced biofuels loan guarantees' in the previous expiry review, but was not analysed during the previous expiry review.
- (89) The programme was in force during the review investigation period on the basis of the request for review.

4.2.5.2. Eligibility

- (90) This programme provides loan guarantees up to \$250 million to assist in the development of new and emerging technologies for advanced biofuels (including biodiesel), renewable chemicals, and biobased products. In broad terms, two types of projects are eligible for the programme: biorefineries, and biobased Product Manufacturing facilities. Advanced biofuel is defined as fuel derived from renewable biomass other than corn kernel starch. The project must be located in a US State.
- (91) Eligible applicants include, but are not limited to, individuals, state or local governments, farm cooperatives, national laboratories, institutions of higher education, and rural electric cooperatives.

⁽³¹⁾ See Section 3.2.1 of the request for review.

⁽³²⁾ Request for review, version open for interested parties, lodged on 11 June 2020 by the European Biodiesel Board ('EBB' or 'the applicant'), on behalf of Union producers representing more than 25 % of the total Union production of biodiesel, recital 102, p. 21.

- (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.

4.3.3. *The Texas Fuel Ethanol and Biodiesel Production Incentive Programme*

4.3.3.1. Legal basis

- (114) The legal basis of this scheme operated by the Texas Economic Development and Tourism Office is Chapter 16 of the Texan Agriculture Code entitled 'Fuel Ethanol, Renewable Methane, Biodiesel, And Renewable Diesel Production Incentive Program'.
- (115) Since 2011, there has been no change in Chapter 16 of the Texan Agriculture Code. This scheme is therefore still in force.

4.3.3.2. Eligibility

- (116) Under this scheme, the Texas government distributes grants to eligible companies producing ethanol, renewable methane, biodiesel, or renewable diesel in Texas.
- (117) To be eligible, such companies must be registered before the Texas Economic Development and Tourism Office.

4.3.3.3. Practical implementation

- (118) Registered Producers that paid a fee of 32 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 1,6 cents for each gallon of biodiesel produced are entitled to receive the grant amounting to 20 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 10 cents for each gallon of biodiesel produced in each registered plant (in the limit of 18 million gallons annually per plant) until the 10th anniversary of the date production from the plant begins ⁽³⁷⁾.
- (119) Given that biodiesel producers are eligible for this scheme and on the basis of facts available ⁽³⁸⁾ (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.

4.3.3.4. Conclusion

- (120) The Commission considered that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the State of Texas in the form of direct grants. The incentive confers a benefit on the companies receiving them under Article 3(2) of the basic Regulation.
- (121) 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.

4.4. **Likelihood of continuation or recurrence of subsidisation**

4.4.1. *Likelihood of continuation of subsidisation of the three federal schemes*

- (122) The main scheme, as in the original investigation and in the previous expiry review, continued to be the Biodiesel Mixture Credit scheme. This scheme was reinstated by the Further Consolidated Appropriations Act by the U.S. Congress on 20 December 2019 (see in this respect recital (44) above), and was in force during the review investigation period. It will at the earliest expire on 1 January 2023.
- (123) Like the Biodiesel Mixture Credit, the Biodiesel Credit and the Small Agri-biodiesel Producer Income Tax Credit have been also reinstated by the Further Consolidated Appropriations Act by the U.S. Congress on 20 December 2019 until 31 December 2022 (see in this respect respectively recitals (46) and (64) above).

⁽³⁷⁾ Chapter 16 of the Texan Agriculture Code, Section 16.006 (b).

⁽³⁸⁾ See Section 3.1.2.3 of the request for review.

- (124) Consequently, these three federal schemes (Biodiesel Mixture Credit, Biodiesel Credit and Small Agri-biodiesel Producer Credit) were enacted by the American Jobs Creation Act of 2004 ⁽³⁹⁾ and first entered into force on 1 January 2005. Moreover, they all have been repeatedly reinstated retroactively until now.
- (125) Furthermore, as explained in recital (72), the USDA bioenergy programme for advanced biofuels was scheduled to expire in 2012, but was extended in 2013 and subsequently in 2014. The Agriculture Act of 2014 extended the programme for another 5 years, until the end of 2018. More recently, the Agricultural Improvement Act dated 20 December 2018 extended this subsidy programme for another five years, i.e. until the end of 2023.
- (126) In addition, as described in recital (81), the 'Credit for production of cellulosic biofuel' was scheduled to expire in 2012. It was extended several times, and lastly, has been reinstated by the Further Consolidated Appropriations Act by the U.S. Congress on 20 December 2019 until 1 January 2021 ⁽⁴⁰⁾.
- (127) 'USDA Biorefinery, renewable chemical and biobased product manufacturing assistance programme' was previously called 'Advanced biofuels loan guarantees'. Throughout its existence, it has been constantly available to US biodiesel producers. It was still in force during the review investigation period, and has been characterised by continuous reinstatements since their first entry into force. All subsidy schemes analysed above, on the basis of which subsidies were granted, were in force during the review investigation period. On the basis of facts available ⁽⁴¹⁾, the Biodiesel Mixture Credit subsidy alone amounts to USD 300 for each tonne of biodiesel mixed with diesel fuel. As a result, given the magnitude of the subsidy amount alone provided by this Biodiesel Mixture Credit subsidy scheme, and the multitude of other available subsidy schemes to US biodiesel producers, the Commission concluded that the US biodiesel industry has continued to be subsidised with subsidy amounts above *de minimis*.

4.4.2. Likelihood of continuation of subsidisation of other schemes

- (128) All subsidy schemes analysed above, on the basis of which subsidies were granted, were in force during the review investigation period.
- (129) A number of other small state subsidy schemes are currently still in force, as those listed under recital (41), and there are no indications that these schemes will come to an end in the near future.

4.4.3. Conclusion on the continuation of subsidisation

- (130) In view of the findings above, and given the lack of cooperation from the US authorities and the US exporting producers, the Commission concluded that the US biodiesel producers have continued to benefit from all the federal and state schemes described in the above recitals, and that the subsidy amounts are above *de minimis*.

4.5. Likelihood of subsidised imports in significant quantities

- (131) Further to the finding of the existence of subsidisation during the review investigation period, the Commission investigated the likelihood of continuation of subsidised imports from the country concerned, should the measures be repealed. Following the imposition of measures in 2009, imports of biodiesel from the USA to the Union dropped to almost zero from the year 2013 onwards. For instance, about 156 tonnes were imported from the USA during the RIP (from 1 July 2019 to 30 June 2020). These volumes only represent 0,04 % of total US exports and even less of the Union consumption. The Commission analysed whether it was likely that subsidised imports would resume in significant quantities should the measure lapse. In particular, the following elements were analysed: the production capacity and spare capacity in the USA, the availability of other markets, and the attractiveness of the Union market.

⁽³⁹⁾ As extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58) and amended by the Energy Improvement and Extension Act of 2008 (P.L. 110-343, Division B) §202-203.

⁽⁴⁰⁾ Further Consolidated Appropriations Act of 20 December 2019 (Public law 116-94).

⁽⁴¹⁾ See recital (50) of Section 3.1.1.1 of the request for review.

4.5.1. Existing spare capacities at US exporting producers

- (132) The Commission examined whether the subsidised exports from the USA to the Union would be made in significant volumes should the measures be allowed to lapse. Due to lack of cooperation from the exporting producers and from the Government of USA mentioned in recital (27) above, it was not possible to carry out an analysis based on verified data supplied by US producers and by the US authorities. The Commission therefore made use of the following sources of information: Eurostat, the request for an expiry review, subsequent submissions from the applicant and the websites of the US Energy Information Administration (EIA) and the US Department of Agriculture (USDA).
- (133) On the basis of data collected from the EIA, the US biodiesel producers' capacity during the review investigation period was 8 412 000 tonnes.
- (134) The US actual production of biodiesel during the RIP was 5 718 000 tonnes (EIA's data), which corresponds to a capacity utilisation of 68 % and a spare capacity of 32 %, or around 2 694 000 tonnes. This significant spare capacity of the US producers presents an incentive to increase production and sell biodiesel at subsidised prices to the Union market, and is therefore likely to be used to supply the Union market should measures be allowed to lapse. Indeed, the US producers can easily increase their production and export it to the EU with the economic benefit of the increase in capacity utilisation ratio and reduction of unit cost of production. The release in the Union market of the US spare capacity would have a significant impact as it amounts to nearly 18 % of the Union consumption during the RIP.
- (135) Moreover, during the RIP, the US production of biodiesel (5 718 000 tonnes) was lower than the consumption (5 934 000 tonnes). Consequently, the USA was importing more biodiesel than it was exporting. During the RIP the total imports amounted to 629 000 tonnes, and the total exports to 428 000 tonnes. However, if the available production capacity was not used to satisfy the domestic demand during the period considered it is unlikely that such available production capacity would be used in the future for the same purpose. The US production capacity reported in the RIP (8 412 000 tonnes, see previous recital) was significantly higher than the domestic consumption. This means that if export market opportunities open up, the US producers are likely to use their spare capacity for export sales rather than for domestic consumption.

4.5.2. Availability of other markets

- (136) It is unlikely that the spare capacity would be used to increase exports to third countries other than the EU. The large third country markets (Brazil, Indonesia, Argentina, China, Thailand) are self-sufficient in terms of domestic biodiesel production and the US has thus far not exported much to those countries in spite of their spare capacities. There is no reason to believe that this will change in the future.

4.5.3. Attractiveness of the Union market

- (137) In order to establish the export price to third countries, the Commission based its findings on publicly available information, that is Global Trade Atlas ('GTA'). It extracted the quantities and values of the export of biodiesel under the HS code 3826 00 for the RIP. The export quantities (in tonnes) to all countries (EU included) amount to 389 075 tonnes, of which insignificant volumes were exported to the Union.
- (138) The average ex-works price of biodiesel sold in the Union by Union producers during the RIP, as shown in Table 1 below, was EUR 771 per tonne.
- (139) Table 1 below shows the average sales price in US dollars per tonne duly adjusted to ex-works (by deducting USD 82,52 per tonne for the inland freight as indicated in the request for the expiry review) for the six countries (outside the EU) to which the USA exported more than 0,1 % of their total exports during the RIP.

Table 1

US export volumes and prices during the RIP

Countries of destination	Export quantities (in tonnes)	Percentage of exports to all countries	Average ex-works price (USD) per tonne	Average ex-works price (EUR) per tonne
Canada	354 442	91,1	805,33	728,48
China	12 363	3,2	316,49	286,29
Norway	3 500	0,9	862,48	780,18
Peru	2 144	0,6	591,72	535,26
Mexico	1 204	0,3	661,23	598,13
South-Korea	475	0,1	363,15	328,49

Source: GTA

(140) Table 1 shows a lot of variation in the export prices among the various countries to which the USA exported the most during the RIP.

(141) Table 1 also shows that the highest average export prices are those to countries such as Canada and Norway to which the US is selling 92 % of their total exports. The expiry review request provides in this respect that the more expensive ‘... biodiesel exported to Canada shall be made from specific types of raw materials that have a better resistance to cold temperatures, such as canola, or can also be HVO which has excellent cold properties ...’. As a result, the more expensive average export prices to the two countries in question are explained by the higher cost price of the feedstock (such as for canola).

(142) Based on GTA, the Commission calculated, an average export price to all destinations subsequently during the RIP, taking into consideration the following elements:

- Due to the large variation of US export prices (as also shown in Table 1 in recital (139)), the Commission excluded from this calculation all countries which represent for the USA a share below 0,1 % of their total sales volume they exported during the RIP. There were in total six countries (apart from the EU) which share is above 0,1 % of the total export volumes of the USA as laid down in Table 1 above.
- As also demonstrated in Table 1, the highest average export prices are those to countries such as Canada and Norway to which the US is selling 92 % of their total exports. These higher export prices are due to the higher cost price of the feedstock (such as for canola).
- Biodiesel exports to the EU will be mainly a mix of different biodiesel types due to the various climates in the EU, whereby the biodiesel to be used in Northern Europe exports will mainly be those that have a better resistance to cold temperatures.
- As a consequence, the calculation of a simple average export price for the purposes of the current assessment gives a fair representation of the average price that would be observed on the Union market and avoids giving disproportionate weight to the exports to Canada and Norway, given the mix of biodiesel types that would likely be exported to the Union where climate conditions vary greatly among Member States.

(143) Taking into account all the above elements, the Commission calculated a simple average export price amounting to USD 682 per tonne (EUR 617). This average export price of EUR 617 is a FOB price to which the ocean freight and insurance costs need to be added to come to a CIF price. These costs amounted to about USD 52 per tonne (EUR 47 per tonne) if the destination would be the Union as per the request for an expiry review.

- (144) The Commission considered that the EUR 47 per tonne is a reasonable indication for the additional ocean freight and insurance costs to other destinations. The average US export price to third countries was thus established at EUR 617 (FOB), which is, even if we were to add ocean freight, insurance costs, the existing customs duty (6,5 %) (in total rounded up to 104 euros per tonne to cover also some additional post-importation expenses) from US to the EU (in total around EUR 721 per tonne) would be far below the Union industry ex-works price of EUR 771 per tonne.
- (145) As a result, this shows that the exporting producers from the USA would be able to sell at a price below EUR 771 per tonne to penetrate the Union market, and that this would be for them an incentive to redirect some of the current exports to third countries towards the Union market, as it is more attractively priced than some other third countries' markets.

4.6. Circumvention and absorption practices

- (146) As mentioned in recital (1), the anti-subsidy measures imposed in 2009 were found to be circumvented by means of transshipments via Canada and by a change in the composition of the blend. The existence of such practices shows the interest of some US producers to enter the Union market, even after the imposition of measures, and is therefore considered as an indication of the attractiveness of the Union market for US biodiesel producers

4.7. Conclusion

- (147) In view of the above considerations, the Commission concluded that there was continuation of subsidisation. In view of the significant spare capacity of the US biodiesel industry and the attractiveness of the Union market in terms of size and sales price, in particular with regard to the price level of US exports to third countries, the Commission found that it is likely that US biodiesel producers will resume exporting biodiesel at subsidised prices to the Union market at large volumes, if measures are allowed to lapse.

5. INJURY

5.1. Definition of the Union industry and Union production

- (148) According to the data provided by the applicant, the like product was manufactured by 49 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.
- (149) The total Union production during the review investigation period was established at around 14 million tonnes. The Commission established the figure on the basis of information provided by the Union industry. As indicated in recital (17), three Union producers were selected in the sample representing 17,5 % of the total Union production of the like product.

5.2. Union consumption

- (150) The Commission established the Union consumption on the basis of industry information and Comext for import data.
- (151) Union consumption developed as follows:

Table 2

Union consumption (tonnes) ⁽⁴²⁾

	2017	2018	2019	Review Investigation period
Total Union consumption (tonnes)	13 843 702	15 444 700	15 762 282	16 955 685
Index	100	112	114	122

Source: Union industry data, Comext

⁽⁴²⁾ Consumption is based on EU-27 data, excluding data related to the United Kingdom.

- (152) During the review investigation period, consumption of biodiesel in the Union, calculated as the sum of imports of biodiesel and the total sales of the Union industry on the EU market, increased by 22 %, that is from 13,8 million tonnes in 2017 to 16,9 million tonnes.

5.3. Imports of the product concerned from the USA

5.3.1. Volume and market share of the imports from the country concerned

- (153) The Commission established the volume of imports on the basis of the information provided by Eurostat (Comext database). The market share of the imports was established on the basis of data provided by the applicant for the Union industry domestic sales and Comext for trade data.

- (154) Imports from the country concerned developed as follows:

Table 3

Import volume (tonnes), market share and prices ⁽⁴³⁾

	2017	2018	2019	Review Investigation period
Volume of imports from the country concerned (tonnes)	176	2 339	139	156
<i>Index</i>	100	1 329	79	89
Market share	0 %	0 %	0 %	0 %
Average price EUR/tonne	1 243	972	1 269	1 812
<i>Index</i>	100	78	102	146

Source: Comext, EU industry sales data for the calculation of the market share

- (155) Since the imposition of measures in 2009, imports from the US have virtually ceased and amounted to only 156 tonnes during the RIP (as compared to more than 1 137 000 tonnes during the original investigation period). Given the negligible import quantities, the average prices could not be considered representative.

5.3.2. Prices and price undercutting

- (156) There were virtually no imports of biodiesel from the US to the Union during the review investigation period that could be used as a reliable basis for calculating undercutting.

- (157) As an alternative, the Commission determined the price undercutting during the review investigation period by comparing:

- (1) the weighted average sales prices of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level (771 EUR/tonne); and
- (2) the average export price of US producers to third countries, duly adjusted for transport cost to the Union and EU customs duty (721 EUR/tonne – see recital (144)).

- (158) The result of the comparison was a price undercutting of 6,4 %.

5.3.3. Imports from other third countries

- (159) During the RIP, imports from third countries amounted to 3 750 000 tonnes or approximately 22 % of the overall Union consumption. The main sources of imports of biodiesel other than the US were Argentina (24 % of EU imports), Malaysia (18 %), Singapore (13 %) and Indonesia (5 %).

⁽⁴³⁾ The import volume is based on EU-27 data, excluding data related to the United Kingdom.

- (160) The (aggregated) volume of imports as well as the market share and price trends for imports of biodiesel from other third countries developed as follows:

Table 4

Imports from third countries ⁽⁴⁴⁾

Country		2017	2018	2019	Review Investigation period
Argentina	Volume (tonnes)	355 782	1 467 325	873 325	905 781
	<i>Index</i>	100	412	245	255
	Market share	3 %	10 %	6 %	5 %
	Average price EUR/tonne	635	620	707	728
	<i>Index</i>	100	98	111	115
Malaysia	Volume (tonnes)	335 769	388 615	731 679	679 860
	<i>Index</i>	100	116	218	202
	Market share	2 %	3 %	5 %	4 %
	Average price EUR/tonne	952	813	669	730
	<i>Index</i>	100	85	70	77
Indonesia	Volume (tonnes)	24 984	777 992	743 456	195 858
	<i>Index</i>	100	3 114	2 976	784
	Market share	0 %	5 %	5 %	1 %
	Average price EUR/tonne	803	671	636	665
	<i>Index</i>	100	84	79	83
Other third countries	Volume (tonnes)	822 027	820 093	1 450 938	1 983 471
	<i>Index</i>	100	100	177	241
	Market share	6 %	5 %	9 %	12 %
	Average price EUR/tonne	662	723	829	874
	<i>Index</i>	100	109	125	132
Total of all third countries except the US	Volume (tonnes)	1 538 562	3 454 050	3 799 448	3 765 041
	<i>Index</i>	100	224	247	245
	Market share	11 %	22 %	24 %	22 %
	Average price EUR/tonne	721	678	732	802
	<i>Index</i>	100	94	102	111

Source: Comext, EU industry sales data for the calculation of the market share

- (161) Duties on imports from Argentina and Indonesia – two major biodiesel exporting countries – were removed in 2018. Consequently, imports from third countries increased in 2018 and stayed at a level of around 3,8 million tonnes in 2019 and during the RIP. Overall, imports from third countries except the US increased by 145 % during the period considered. In addition, their market share increased from 11 % to 22 % during the period considered.

⁽⁴⁴⁾ Imports from third countries are based on EU-27 data, excluding data related to the United Kingdom as a Member State but including data related to the United Kingdom as a third country.

- (162) As far as prices are concerned, the situation is different from one country to another.
- (163) Regarding Argentina, the main source of imports, in February 2019, the Commission imposed definitive anti-subsidy measures on imports of biodiesel from this country, and, in parallel, adopted a decision accepting sustainable price commitments (known as 'undertakings') from eight Argentine producers and the Argentinian Chamber of Biofuels (CARBIO). This led to a significant increase in prices for year 2019 (by 14 % in comparison with 2018) and the RIP (by 17 % in comparison with 2018).
- (164) For Indonesia and Malaysia, prices were on a decreasing trend. At the same time, for the other third countries, they were significantly increasing. Overall, the average sales prices of imports from third countries other than the USA increased during the period considered by 11 % during the period considered. This trend is consistent with the trend observed for imports from the countries concerned in Table 3 above. However, the price trend is different in comparison with the sales prices of the Union industry on the Union market in Table 8 below. The prices of the sampled Union producers were on the decrease, in line with the decrease of the production costs. The consequence is that the price gap between third countries exporters and the sampled Union producers reduced, increasing the competitiveness of the Union industry.

5.4. Economic situation of the Union industry

5.4.1. General remarks

- (165) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (166) As mentioned in recital (17), sampling was used for the assessment of the economic situation of the Union industry.
- (167) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. It evaluated the macroeconomic indicators on the basis of data provided by the EU industry and other sector-specific macroeconomic data such as the FAO-OECD. It evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (168) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (169) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.4.2. Macroeconomic indicators ⁽⁴⁵⁾

5.4.2.1. Production, production capacity and capacity utilisation

⁽⁴⁵⁾ The macroeconomic data was based on EU-27 excluding data from the UK.

- (170) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation period
Production volume (tonnes)	12 639 715	13 166 083	13 931 438	13 984 220
<i>Index</i>	100	104	110	111
Production capacity (tonnes)	16 047 231	16 707 893	16 862 595	17 529 047
<i>Index</i>	100	104	105	109
Capacity utilisation	79 %	79 %	83 %	80 %
<i>Index</i>	100	104	105	101

Source: Information provided by the applicant and the sampled Union producers.

- (171) Union production increased from 12,6 million tonnes in 2017 to 14,0 million tonnes during the RIP, that is an increase by 11 % during the period considered. In a situation of consumption increase by 22 % over the period considered, the Union industry responded positively by increasing its production.
- (172) At the same time the production capacity increased by 9 % during the period considered and reached 17,5 million tonnes during the RIP. The Union industry is developing its capacity to respond to an increasing demand. According to a report ⁽⁴⁶⁾, this capacity expansion concerns mainly Hydrotreated Vegetable Oil (HVO) production.
- (173) As a result of the simultaneous increase of the production and the production capacity, the capacity utilisation was stable during the period considered, at around 80 %

5.4.2.2. Sales volume and market share

- (174) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2017	2018	2019	Review Investigation period
Sales volume on the Union market (tonnes)	12 305 049	11 988 560	11 962 754	13 190 560
<i>Index</i>	100	97	97	107
Market share	89 %	78 %	76 %	78 %
<i>Index</i>	100	87	85	88

Source: Information provided by the applicant and the sampled Union producers

- (175) The Union industry increased their sales on the Union market from 12,3 million tonnes in 2017 to 13,2 million tonnes during the RIP (+7 %).
- (176) Since the consumption in the Union increased by 22 %, because of the lower increase in the actual sales volume, the market share of the Union industry decreased, from around 89 % in 2017 to 78 % during the RIP. This decrease of market share is linked to the increase of imports from third countries especially from 2018 onwards (recital (161)).

⁽⁴⁶⁾ USDA, Biofuels Annual report (GAIN report), 29 June 2020.

5.4.2.3. Growth

- (177) A number of indicators (production, production capacity, sales, employment) demonstrate a positive growth of the Union industry during the period. Yet, this growth is moderate as compared to the development of the consumption of biodiesel during the same period. In fact, the market share of the Union industry actually decreased during the reference period.

5.4.2.4. Employment and productivity

- (178) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2017	2018	2019	Review Investigation period
Number of employees	2 643	3 126	3 527	3 909
Index	100	118	133	148
Productivity (tonne/employee)	4 782	4 211	3 950	3 577
Index	100	88	83	75

Source: Information provided by the applicant and the sampled Union producers

- (179) During the period considered, employment grew from 2 643 to 3 909, an increase of 48 %.
- (180) As production grew to a lesser extent (+11 %), this materialised in a decrease in productivity (-25 %).

5.4.2.5. Magnitude of the amount of subsidisation and recovery from subsidisation

- (181) As explained in recital (155), imports from biodiesel virtually ceased after the imposition of countervailing measures and there were virtually no subsidised imports from the USA during the review investigation period. Therefore, the magnitude of subsidisation could not be assessed on actual data, so it was estimated as still significant above *de minimis*. The investigation therefore focused on the likelihood of a recurrence of subsidisation should the countervailing measures be repealed.
- (182) In the previous expiry review the Union industry showed signs of recovery from the effects of past subsidisation. During the period considered of the current expiry review investigation, the recovery process continued as demonstrated by a favourable trend for the Union industry of the main injury indicators.

5.4.3. Microeconomic indicators ⁽⁴⁷⁾

5.4.3.1. Prices and factors affecting prices

- (183) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

⁽⁴⁷⁾ Microeconomic indicators are based on EU-28 data, including the United Kingdom. Based on the low volume of sales of the sampled Union producers in the United Kingdom (approx. 1,1 % of the average EU sales of those producers in the RIP), the impact of transactions concerning the United Kingdom would appear to be minimal on the injury findings, and the conclusions on material injury would therefore not have been altered when using EU-27 data.

Table 8

Sales prices in the Union

	2017	2018	2019	Review Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	834	801	771	771
<i>Index</i>	100	96	92	92
Average price of vegetable oils (index)	100	86	81	86
Unit cost of production (EUR/tonne)	828	778	760	755
<i>Index</i>	100	94	92	91

Source: Sampled companies, FAO for the vegetable oil price index

- (184) During the period considered the cost of production decreased by 9 % (from 828 EUR/tonne to 755 EUR/tonne). This is partly due to the decrease in the price of vegetable oils which was on the decrease over the period. While not all biofuel is made of vegetable oils, the price of vegetable oils is a good proxy for the price of the main input for the production of biodiesel.
- (185) The average sales price decreased by 8 %, from 834 EUR/tonne in 2017 to 771 EUR/tonne during the RIP. This can be linked to the decrease observed in the price of production (see recitals (183) and (184)).

5.4.3.2. Labour costs

- (186) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2017	2018	2019	Review Investigation period
Average labour costs per employee (EUR)	63 785	70 533	72 306	72 533
<i>Index</i>	100	111	113	114

Source: Sampled companies

- (187) The average labour cost in the sampled companies increased by 14 % over the RIP. The impact of this variation is rather small given that labour cost represent only about 3 % of the total cost of manufacturing.

5.4.3.3. Inventories

- (188) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	99 868	126 345	124 567	114 216
<i>Index</i>	100	127	125	114
Closing stocks as a percentage of production	0,8 %	1,0 %	0,9 %	0,8 %
<i>Index</i>	100	121	113	103

Source: Sampled companies

- (189) The level of inventory was stable around 1 % of the production. This is a very low ratio indicating that the industry is able to work on demand and in just-in-time and limit the inventory. This is also necessary to avoid biodiesel degradation.

5.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (190) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	0,96 %	2,13 %	1,78 %	2,84 %
<i>Index</i>	100	223	186	297
Cash flow (EUR)	45 139 254	10 723 312	54 431 877	58 021 678
<i>Index</i>	100	24	121	129
Investments (EUR)	40 430 425	20 634 073	34 169 705	17 028 015
<i>Index</i>	100	51	85	42
Return on investments	22 %	29 %	25 %	44 %
<i>Index</i>	100	128	112	198

Source: Sampled companies

- (191) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability remained at a low level. Yet it shows a slightly positive trend over the period considered increasing from 1 % to 3 %. This was linked to the decreasing cost of production for the sampled companies (-9 %). Behind this average, there is however a great disparity among the sampled Union producers with some companies not making any profit at all.

- (192) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed positively toward the end of the period considered (in 2019 and first half of 2020), but year 2018 saw a sharp drop in cash flow. The drop in 2018 is impacted mainly by the specific situation of only one of the sampled companies which has a special business model while for the other two sampled companies the trend was rather stable.
- (193) Investments in the sampled companies does not present a clear trend over the period considered. Investment from one or the other sampled company or the absence thereof can bring the level of investments up and down from one year to the other. Investments represented about 1-2 % of turnover during the period considered, which is limited.
- (194) The return on investments (ROI) is the profit in percentage of the net book value of investments. It developed positively over the period considered and remained high in the RIP. This high ROI is however mainly linked to low net book value of investments, rather than high profit.

5.4.4. Conclusion on injury

- (195) During the period considered, in the context of almost non-existent imports from the USA, the volumes of imports from third countries increased significantly (by 145 %), but their price level increased as well (by 11 %). At the same time the prices of the Union industry decreased (by 8 %), in line with a decrease in the production costs (by 9 %). Consequently, the price gap between third countries exporters and the sampled Union producers reduced, thereby increasing the competitiveness of the Union industry.
- (196) Overall, the injury indicators depict a positive trend during the period considered, in particular with regard to production (+11 %), production capacity (+9 %) and sales (+7 %) and show that the Union biodiesel industry is slowly recovering from past injury. The analysis of the injury indicators demonstrates that the Union industry is currently not suffering from material injury. However, some indicators, in particular a low profitability ($\leq 3\%$) indicate that it is nevertheless still in a fragile economic situation.
- (197) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 8(4) of the basic Regulation during the review investigation period.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (198) The Commission assessed, in accordance with Article 18(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the subsidized imports from the US if the measures were allowed to lapse.
- (199) In this regard, the Commission examined the production capacity and spare capacity in the US, the likely price levels of imports from the US in the absence of countervailing measures, and their impact on the Union industry including undercutting without countervailing measures

6.1. Production capacity and spare capacity in the US

- (200) As described in Section 4.5.1 above, the quantities that could be exported by US biodiesel producers are significant compared to the size of the Union market. Indeed, the spare capacities represent 18 % of the Union consumption during the RIP. Consequently, the Commission concluded that the spare capacities available are significant.

6.2. The likely price levels of imports from the US in the absence of countervailing measures

- (201) As described in Section 4.5.3 above, based on the current pricing behaviour on third countries export markets, the US producers exported to their main third markets at prices lower than the domestic prices in the US. In addition, as indicated in recitals (157)-(158) above, those prices are also on average undercutting the Union industry prices on the Union market by 6,4 %. Therefore, taking into account the price level of exports from the USA to other third markets, exporting to the Union is potentially much more attractive for the US exporters. In addition, as indicated in Section 4.5.3 above the Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption.

6.3. Likely impact on the Union industry

- (202) Therefore, if measures were allowed to lapse, significant volumes of subsidised biodiesel from the USA would exert a very strong downward pressure on Union prices and have a significant impact on the Union industry's economic situation. As a result, it is likely that Union industry production and sales volumes would decrease and the small profits currently achieved by the industry would turn into losses.

- (203) The Commission further assessed the possible impact of the imports by modelling two possible scenarios should the measures be allowed to lapse, namely (1) a surge of imports from the US; and (2) a drop of prices in the EU due to increased competition, all other things being equal.
- (204) In the first scenario, the Commission modelled two possible levels of US imports. The first option entailed that imports from the US would come at their historical volumes (during the initial IP ⁽⁴⁸⁾), that is 1,1 million tonnes. As a result of the increase in imports from the US and the consequent decrease in sales of the EU industry, the profitability of the EU industry would fall by 0,14 % point, that is from +2,84 % to +2,70 %. The second option took into account the very significant increase in the size of the EU market from 6,6 million tonnes during the initial IP to 17 million tonnes during the RIP (+158 %). In that context, the Commission modelled a surge of imports corresponding to the same market share for the US of 17,2 % as during the initial investigation period. The result was that the profitability of the Union industry would fall by 0,41 % point from +2,84 % to +2,43 %. In both cases, the impact of a surge of US imports, at constant prices, can be described as rather moderate. This is linked to the high share of the variable costs in the biodiesel industry.
- (205) In the second scenario, the effect of a price decrease was found to be potentially highly damaging. In case of a decrease of Union prices to the level of US exports prices to third country (721 EUR/tonne), the profit would drop from +2,84 % to -3,88 %. In case of a decrease of Union prices by 10 %, that is from 771 EUR/tonne to 694 EUR/tonne, the profit would be reduced from +2,84 % to -7,94 %. In any case, any price decrease higher than -2,9 % would zero the Union industry profit.
- (206) In reality, if measures were allowed to lapse, it is very likely that a combination of the two scenarios above would occur on the market. In particular, significant volumes of biodiesel originating in the USA could be expected to enter the Union market and at lower prices than the Union industry. As a result, the market share of the Union industry would shrink as well as their prices. This would result in significant losses to the Union industry.

6.4. Conclusion on likelihood of recurrence of injury

- (207) On this basis, and noting the current fragile situation of the Union industry, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of subsidised imports from the USA at injurious prices and material injury would be likely to recur.

7. UNION INTEREST

- (208) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing countervailing measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

7.1. Interest of the Union industry

- (209) If existing measures were allowed to lapse, the Union industry will most certainly be faced with increased unfair competition from the US biodiesel producers most likely putting an abrupt halt to the on-going recovery of the Union industry.

- (210) The Commission concluded that the continuation of the measures would be in the interest of the Union industry.

⁽⁴⁸⁾ 1 April 2007 to 31 March 2008.

7.2. Interest of unrelated importers

- (211) No importer opposed the prolongation of the measures.
- (212) Shell Trading Rotterdam argued that the measures, by limiting the supply of the Union market, lead to increased prices. It also noted the availability of the biodiesel from other markets.
- (213) The measures do not seem to affect significantly the importers as alternative sources of supplies are available. This is evidenced by the significant market share of imports from third countries.
- (214) The Commission therefore concluded that the continuation of the measures would not be detrimental to the interest of the importers.

7.3. Interest of users

- (215) The participation of users in the investigation was limited.
- (216) Two users, Preem, the largest fuel company in Sweden, and Valero Energy Ltd Ireland claimed that the prolongation of the measures will be a direct hindrance for the green development of the transport sector in Europe. Preem and Valero Energy Ltd Ireland requested specifically that HVO should be excluded from the current product scope as they expect a shortage of HVO in the coming years. Valero Energy Ltd Ireland specifically referred to the EU renewable energy targets for transport for 2030, claiming that those targets would not be met given current EU production.
- (217) The Commission observed that Union producers have enough capacity to satisfy the current demand and even spare capacity to satisfy future increase and exports if need be. Furthermore, it was too early to assess with confidence whether shortages are likely to materialise in 2030, given, in particular, recent expansions in EU capacity. This said, the Commission may be in a better position to assess the situation in case it is asked to conduct an expiry review in five years' time. Consequently, this claim was dismissed.
- (218) There are no indications that the existing measures in force have affected negatively the Union users of biodiesel, and notably there is no evidence that existing measures had an adverse impact on their profitability.
- (219) The Commission therefore concluded that the continuation of the measures would not be detrimental to the interest of the users.

7.4. Conclusion on Union interest

- (220) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of biodiesel originating in the USA.

8. COUNTERVAILING MEASURES

- (221) In view of the conclusions reached with regard to the likelihood of continuation or recurrence of subsidisation and injury, it follows that, in accordance with Article 18(1) of the basic Regulation, the countervailing duties applicable to imports of biodiesel originating in the USA, imposed by Regulation (EU) 2015/1519 as amended by Regulation (EU) 2016/675 ⁽⁴⁹⁾ should be maintained for an additional period of five years.
- (222) As outlined in recital (2) above, the countervailing duties in force on imports of biodiesel from the USA were extended to cover also imports of the same product consigned from Canada, whether declared as originating in Canada or not, and 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 USA.

⁽⁴⁹⁾ Commission Implementing Regulation (EU) 2016/675 of 29 April 2016 amending Implementing Regulation (EU) 2015/1519 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 (OJ L 116, 30.4.2016, p. 27).

- (223) The countervailing duties to be maintained shall continue to be extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not as well as to 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.
- (224) The exporting producers from Canada that were exempted from the measures, as extended by Regulation (EU) 2015/1519 as amended by Regulation (EU) 2016/675, shall also be exempted from the measures imposed by this Regulation.
- (225) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 ⁽⁵⁰⁾.
- (226) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ⁽⁵¹⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed 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, originating in the USA, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 16 (TARIC code 2710 20 16 29), ex 3824 99 92 (TARIC code 3824 99 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 59, 3826 00 10 99) and ex 3826 00 90 (TARIC code 3826 00 90 19).

2. The rates of the definitive countervailing duty applicable to the, net free-at Union frontier price, before duty, of the product described in paragraph 1, and manufactured by the companies listed below, shall be a fixed amount as follows:

Company	Countervailing duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	237,0	A933
Cargill Inc., Wayzata	213,8	A934
Green Earth Fuels of Houston LLC, Houston	213,4	A935
Imperium Renewables Inc., Seattle	216,8	A936
Peter Cremer North America LP, Cincinnati	211,2	A937
Vinmar Overseas Limited, Houston	211,2	A938
World Energy Alternatives LLC, Boston	211,2	A939
Companies listed in Annex I	219,4	See Annex I
All other companies	237,0	A999

⁽⁵⁰⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

⁽⁵¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

The countervailing duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. The application of the individual duty rate specified for the companies listed in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

Article 2

1. The definitive countervailing duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is extended to 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, consigned from Canada, whether declared as originating in Canada or not, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada	C114
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'all other companies' in Article 1(2), which is a definitive countervailing duty of EUR 237 per tonne net.

The countervailing duty on blends shall be applicable in proportion, in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of exemptions granted to the companies listed in paragraph 1 or authorised by the Commission in accordance with Article 4(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the countervailing duty as imposed by paragraph 1 shall apply.

Article 3

1. The definitive countervailing duty as set out in Article 1, paragraph 2, is hereby extended to 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 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, and currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 43 (TARIC code 2710 19 43 30), ex 2710 19 46 (TARIC code 2710 19 46 30), ex 2710 19 47 (TARIC code 2710 19 47 30), ex 2710 20 11 (TARIC code 2710 20 11 30), ex 2710 20 16 (TARIC code 2710 20 16 30), ex 3824 99 92 (TARIC code 3824 99 92 20) and ex 3826 00 90 (TARIC code 3826 00 90 30).

The countervailing duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of the individual duty rate specified for the companies listed in Article 1, paragraph 2, shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex III. If no such invoice is presented, the duty rate applicable under Article 1(2) to 'all other companies' shall apply.

Article 4

1. Requests for exemption from the duty extended by Article 2(1) and Article 3(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G
Office: Rue de la loi 170, CHAR 04/034
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 23(6) of Regulation (EU) 2016/1037, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Article 1, from the duty extended by Article 2(1) and Article 3(1).

Article 5

In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽⁵²⁾, the amount of countervailing duty laid down in Articles 1, 2 and 3 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 6

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁵²⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

ANNEX I

Company Name	City	TARIC additional code
AC & S Inc.	Nitro	A941
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
American Made Fuels, Inc.	Canton	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
BioPur Inc.	Bethlehem	A941
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels LLC	Tulsa	A940
ED&F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels Inc.	Madison	A940
Freedom Fuels LLC	Mason City	A941
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel LP (BioSelect Fuels)	Houston	A940
GeoGreen Fuels LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940

Griffin Industries Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents Inc.	Salt Lake City	A940
Incobrasa Industries Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels Inc.	Newark	A940
Integrity Biofuels	Morristown	A941
Iowa Renewable Energy LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries LLC	Claypool	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
Natural Biodiesel Plant LLC	Hayti	A941
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels Ltd.	Houston	A940
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Piedmont Biofuels Industrial LLC	Pittsboro	A941
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
Prairie Pride	Deerfield	A941

RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Seminole Biodiesel	Bainbridge	A940
Southeast BioDiesel LLC	Charlotte	A941
Soy Solutions	Milford	A940
SoyMor Biodiesel LLC	Albert Lea	A940
Stepan Company	Northfield	A941
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940
U.S. Biofuels Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel LLC	Farley	A940
Western Iowa Energy LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940
Yokaya Biofuels Inc.	Ukiah	A941

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3) or Article 2(2):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration: 'I, the undersigned, certify that the (volume) 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 sold for export to the European Union covered by this invoice was manufactured by [*company name and address (TARIC additional code)*] in [*country/ies concerned*]. I declare that the information provided in this invoice is complete and correct.'

ANNEX III

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 3(2):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration: 'I, the undersigned, certify that the (volume) 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 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin sold for export to the European Union covered by this invoice was manufactured by [*company name and address*] [*TARIC additional code*] in the United States of America. I declare that the information provided in this invoice is complete and correct.'

COUNCIL REGULATION (EC) No 599/2009**of 7 July 2009****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Provisional measures**

- (1) The Commission, by Regulation (EC) No 193/2009 ⁽²⁾ (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of biodiesel originating in the United States of America ('USA' or 'country concerned').
- (2) In the parallel anti-subsidy proceeding, the Commission, by Regulation (EC) No 194/2009 ⁽³⁾ imposed a provisional countervailing duty on imports of biodiesel originating in the United States of America.

1.2. Subsequent procedure

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

- (4) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of biodiesel originating in the USA and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

- (5) The US Government (USG) and other interested parties expressed their disappointment with the decision to grant only sixteen days to provide comments on the provisional disclosure and also with the decision to decline the requests of certain parties for a meaningful extension of time to file those comments.

- (6) Article 20(1) of the basic Regulation provides that interested parties may be provided with the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. In this regard, it is the Commission's practice to provide disclosure to all interested parties to a proceeding upon publication in the *Official Journal of the European Union* of a regulation imposing provisional measures and to provide a period of time within which parties may provide comments thereon. This practice was followed in this proceeding. In regard to the time period within which parties were required to provide comments, the basic Regulation does not specify what period should be allowed. In this proceeding, it was considered that a period of sixteen days (subsequently extended to seventeen days) be granted given the complexity of the proceeding and the need to respect the requirement in Article 11(9) of the basic anti-subsidy Regulation that the investigation be concluded within thirteen months of initiation.

- (7) Further to the disclosure of the provisional findings in the parallel anti-subsidy proceeding, the USG commented on the duty rate established for 'all other companies'. In regard to the rate of duty established for US companies that did not make themselves known and cooperate in the investigation, the provisional duty rate was set at the level of the lower of the highest subsidisation margin or highest injury margin found for the sampled cooperating exporting producers. The same method was also applied in the anti-dumping proceeding. The rate of the anti-dumping duty so established was as set out in Article 1(2) of the provisional Regulation ('all other companies' rate of EUR 182,4 per tonne). The USG considers that this rate of duty is a rate improperly calculated on the basis of the facts available. The USG considers that, in order to rely on facts available under Article 18 of the basic Regulation, it must first be

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 67, 12.3.2009, p. 22.

⁽³⁾ OJ L 67, 12.3.2009, p. 50.

determined that an interested party has refused or failed to provide the 'necessary information' ⁽¹⁾. The USG rather considers that the weighted average rate calculated for the non-sampled cooperating companies should be applied instead.

(8) In reply to this it should be noted that, at initiation stage, the Commission sent the sampling form, complaint and the Notice of Initiation to the companies listed in the complaint (more than 150 companies). A copy of the sampling form was also attached to the Note Verbale sent to the Mission of the United States of America to the European Communities at initiation and they were invited to send it to US exporters/producers USA. Moreover, the National Biodiesel Board ('NBB'), which has been an interested party from the outset of this proceeding, represents a great number of companies in the biodiesel industry in the USA.

(9) The Notice of Initiation as well as the cover letter attached to the sampling form drew the attention of the consequences of non-cooperation. As mentioned in recital (8) of the provisional Regulation, more than 50 companies identified themselves in the context of the sampling exercise and provided the requested information within the 15 day period. These companies accounted for more than 80 % of the total imports of biodiesel from the USA to the Community.

(10) Subsequent to the imposition of provisional measures, the US authorities were asked to provide additional information. In particular, the authorities were asked to invite any additional exporters/producers of biodiesel in the USA beyond those listed in Article 1 and the Annex to the provisional Regulation, who were not known at the time of the initiation and did not previously refuse to cooperate ⁽²⁾, to make themselves known.

(11) The US authorities provided a list containing the names of more than 100 additional companies (producers/exporters) in the USA. It was examined whether any of the companies had been invited to cooperate at the stage of initiation of the proceeding. The investigation revealed that a significant number of the companies on the list had already been invited to cooperate during the sampling exercise but had chosen not to do so at that time. In other words, these companies were aware of the consequences of non-cooperation in accordance with Article 18 of the basic Regulation.

⁽¹⁾ Article 18(1) of the basic Regulation states: 'In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. [...]'.
⁽²⁾ Unlike those companies which received a sampling form but did not return it.

(12) However, as regards those companies (more than 40) on the list who were unknown to the Commission at the time of the initiation of this proceeding, it was noted that the request to the US authorities to provide details of these companies was made after the imposition of provisional measures. It was therefore decided to add these companies to the Annex of this Regulation and apply the same duty rate to these companies as to those who expressly cooperated but were not chosen in the sample. These companies received disclosure of the essential facts and considerations on the basis of which it was intended to impose definitive measures and were invited to comment on the fact that it was proposed to add their names to the Annex of this Regulation.

(13) Following final disclosure, the USG welcomed the proposal to apply the weighted average duty to additional companies. However, the USG considered that no explanation had been provided as to why other companies are made subject to the 'all other companies' rate. In this regard it is noted that for the companies that were invited to cooperate during the sampling exercise, explanations have already been given above. Regarding possible US exporters/producers that were not individually notified of the investigation nor mentioned in the list referred to in recital (11), it is noted first of all that extensive efforts were made upon initiation of the proceeding to contact companies in the USA that might be concerned by this proceeding (see recitals (8) and (10) above). Furthermore, additional efforts were made subsequent to the imposition of provisional measures as mentioned in recital (10) above to identify other companies which resulted in the addition of more than 40 companies to the list of those to whom the weighted average duty would apply. It is considered that these extensive efforts have given every opportunity to biodiesel companies in the USA to make themselves known. In this regard, it is noted that the relevant industry association has been involved in the proceeding since its initiation. Consequently, it is considered that the 'all other companies' rate of duty should be applied to companies that did not make themselves known.

(14) One company that submitted a reply to the sampling form and was consequently listed in the Annex to the Provisional Regulation requested that its parent company be added to the list of companies in the Annex to this Regulation. This company also requested that the city location of the two companies be changed in the Annex to correctly reflect the address on the invoices of the companies.

(15) Having examined this company's request, it was considered that the parent company should also be listed in the Annex to this Regulation as it was mentioned in the company's reply to the sampling form as the only related company involved in the biodiesel business. The city location for both companies is also being revised.

- (16) It is recalled that the investigation of dumping and injury covered the period from 1 April 2007 to 31 March 2008 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from January 2004 to the end of the IP ('period considered').

1.3. Sampling of Community producers and exporting producers in the USA

- (17) In the absence of any comments concerning the sampling of exporting producers in the USA the provisional findings in recitals (5) to (10) of the provisional Regulation are hereby confirmed.
- (18) Certain parties commented on the representativity of the sample of Community producers. These comments are addressed in recitals (74) to (78) below.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (19) It is recalled that in the notice of initiation, the product allegedly being dumped was defined as fatty-acid monoalkyl esters and/or paraffinic gasoils from synthesis and/or hydro-treatment, of non-fossil origin (commonly known as 'biodiesel'), whether in pure form or in a blend.
- (20) The complaint contained *prima facie* evidence that biodiesel and all blends, of biodiesel with mineral diesel, produced in the USA and exported at dumped price to the Community had affected the economic situation of the biodiesel producers in the Community. Consistent with the characteristics of the relevant US biodiesel producers and domestic market, the definition of the product concerned intended to cover biodiesel also when incorporated into the biodiesel blends. It was however considered that the definition of the product concerned as mentioned in the Notice of Initiation and in recital (19) above, could give rise to concerns as to what producers and what product types were intended to be covered by the investigation and those that were not.
- (21) Similarly, for the investigation of dumping and injury, in particular for establishing the dumping margins and injury elimination levels it was necessary to clearly identify the product types that were concerned by the investigation.
- (22) In line with the characteristics of the US market, the product concerned was provisionally defined as fatty acid monoalkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', whether in pure form or in blends, which are above B20. Hence the

product concerned covered pure biodiesel (B100) and all blends which contain more than 20 % biodiesel ('the product concerned'). This threshold was considered to be appropriate to allow a clear distinction between the various types of blends which are intended to be further blended and those intended for direct consumption on the US market.

- (23) The investigation showed that all types of biodiesel and the biodiesel in the blends covered by this investigation, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception of that various parties have of it.
- (24) Claims were received from interested parties on the definition of the product concerned and the like product whereby they contested both the definition of the product concerned and the like product simultaneously with the same arguments without making any distinction between the concept of product concerned and like product in the context of the proceeding.
- (25) It is recalled that the concept of the product concerned is governed by the provisions of Article 1(1) to 1(3) of the basic Regulation, the interpretation of the term 'like product' is mentioned in Article 1(4) of the basic Regulation. Hence, the claims will be addressed separately below.
- (26) One party questioned to what extent blends with low proportion of biodiesel (e.g. B21) should still deem to qualify as biodiesel on par with pure biodiesel (B100) or on similar blends that consist primarily of biodiesel with lower amount of mineral diesel (e.g. B99). They claimed that B100 and B99 basically underwent the investigation and that all the calculations of dumping and injury were made on the basis of these two product types. In their view establishing a threshold just above B20, namely the low-level blend sold directly to consumers in the USA leads to an artificial definition of the product concerned.
- (27) The same party also questioned whether a blend with 20 % biodiesel still qualifies to be a biodiesel fuel rather than mineral diesel which is not included in the definition of the product concerned. This party understood that the EU supports the view that a new customs heading should be created⁽¹⁾ for biodiesel in the customs Harmonised System (HS). In its view the Commission broadened the definition of the product in the present proceeding and expanded the product types affected by the imposition of the measures.

⁽¹⁾ Heading number 3826 00 to cover 'biodiesel and mixtures thereof, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals'.

- (28) In addition, the party considered that at the time of the investigation no specific threshold existed to determine what is biodiesel for the classification in the combined nomenclature (CN) code 3824 90 91, the specific code created since 1 January 2008 for biodiesel by the EU. The party questioned whether under the rule 3(b) of the general rules for the interpretation of the CN⁽¹⁾ a blend containing less than 50 % biodiesel could still qualify as biodiesel. They further mentioned that the examples of blends mentioned in the Commission questionnaire were of high biodiesel contents and thus implied that the product concerned is only biodiesel and blends containing very high levels of biodiesel.
- (29) The party also claimed that the EU cannot change the definition of the product concerned whilst maintaining a different like product. They referred to the provisional disclosure to the sampled US biodiesel producers that demonstrates that the sampled US producers sold blends exclusively made of various types of biodiesel. Hence the product concerned should be limited to the products containing 100 % of biodiesel (B100), even if composed of biodiesel made of different feedstock, or to blends containing 99 % of biodiesel (B99).
- (30) The party referred to a recent Court Judgement⁽²⁾ concerning imports of ammonium nitrate and concluded that the rationale of that judgment also applies to the current proceeding and that biodiesel that is not part of blends in very high content cannot be subject to the investigation and to measures as it is not the like product for which dumping and injury findings were drawn, namely products that contain only biodiesel (B100) or 99 % of biodiesel (B99).
- (31) The parties did not bring any evidence or a legal reference which would show that the product concerned was not correctly defined in the present investigation. The provisions in Article 1(1) to 1(3) of the basic Regulation provide guidance as to the definition of the product concerned. Article 1(1) states that: 'An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.'
- (32) As mentioned in recital (20) above, the complaint contained *prima facie* evidence that biodiesel and all blends, of biodiesel with mineral diesel, produced in the USA and exported at dumped prices to the Community had affected the economic situation of the biodiesel producers in the Community. The dumping and the injury margins were determined for each individual sampled producer on the basis of the product types they sold to the Community market.
- (33) The parties did not bring any evidence showing that the threshold fixed in the provisional Regulation to set the dividing line between product concerned and product non concerned was artificial. As mentioned in recitals (24) and (26) of the provisional Regulation, the investigation showed that B20, and potentially lower level blends, were actually sold directly to consumers in the US. The investigation also showed that the market for blending and the market for consumer products were different markets with different customers: one market where biodiesel and biodiesel blends are destined to further blending by traders and blenders and one market where the blends are destined to the distribution network and thus to consumers. Defining the threshold for the product concerned above B20 allowed to draw a clear dividing line and avoided confusion between the products, the markets and the various parties in the USA.
- (34) In all anti-dumping investigations it is common that individual companies investigated do not produce and sell all the product types included in the definition of the product concerned. Some companies may produce a very limited range of product types while other may produce a larger range. This however does not affect the definition of the product concerned. It is therefore considered that the claim that the product concerned should only cover the product types that were exported by the US producers and used for the dumping and the injury calculations is unfounded.
- (35) As mentioned in the provisional Regulation and in recital (19) above, the investigation primarily focused on biodiesel, whether in pure form or incorporated in blends. The anti-dumping measures will apply to the relevant blends exported to the Community market. Hence, it is considered that the question whether a blend with 20 % biodiesel still qualifies for a biodiesel fuel rather than mineral diesel which is not included in the definition of the product concerned is not relevant.
- (36) It should be clarified that the dumping and the injury findings of each company investigated were exclusively based on the relevant product types which were produced and sold by the relevant company during the IP. Claiming that the definition of the product concerned including blends above B20 would affect unduly US producers is not founded and cannot lead to the conclusion that the product concerned should be limited to the products that contain 100 % of biodiesel (B100) even if composed of biodiesel of different feedstock or a blend composed of 99 % of biodiesel (B99). Including blends above B20 in the definition of the product concerned had no impact whatsoever on the findings made for companies investigated which are not producing this product type.
- ⁽¹⁾ 'Mixtures composite goods consisting of different materials or made of different components and goods put in sets for retail sales, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.'
- ⁽²⁾ Case T-348/05: JSC Kirovo-Chepetsky Khimichesky Kombinat v. Council, 10 September 2008, paragraphs 61-63.

- (37) The allegation of the party according to which the rationale of a Court Judgement⁽¹⁾ also applies to the current proceeding and that biodiesel that is not part of blends in very high content cannot be subject to the scope of the investigation is also not founded. In fact, for each company investigated, any injury and dumping margins will exactly match the product concerned and the like product for which dumping and injury findings were established, namely the relevant products types that contain biodiesel that were sold domestically and exported to the Community by that company. Also, the judgment which is invoked by the operator concerned a review of existing anti-dumping measures resulting in their extension to other products than the product concerned, which is not the case in the current investigation.
- (38) Although it is considered that the examples provided in a questionnaire intended to collect data for the purpose of an investigation cannot be used to make assumptions as to the conclusion of the investigation, it is noteworthy that the Commission cannot know in advance, namely before its on-spot investigation takes place, which types of products will be produced and sold in the domestic market and for export by the companies concerned at the moment of the drafting of the questionnaire. The product concerned by anti-dumping investigations may cover a range of different product types and the fact that some of them may not be dumped does not lead to their exclusion from the definition of the product concerned.
- (39) Based on the above facts and considerations, it is confirmed that all types of biodiesel and the biodiesel in the blends covered by this investigation, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it.
- (40) It was provisionally found that the products produced and sold on the domestic market of the USA, which are covered by this investigation, have similar basic physical, chemical and technical characteristics and uses as those exported from this country to the Community market. Similarly, the products manufactured by the Community industry and sold on the Community market have similar basic physical, chemical and technical characteristics and uses when compared to those exported to the Community from the country concerned.
- (41) Therefore no differences were found between the various types of the product concerned and the Community like products sold on the Community market which would lead to the conclusion that the products produced and sold on the Community market is not a like product, sharing the same or very similar basic physical, chemical and technical characteristics as to the types of the product concerned produced in the USA and exported to the Community. It was therefore concluded that all types of biodiesel covered by this investigation are considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (42) One party claimed that the definition of the like product is intricately linked to the identification of the product concerned and must be established in term of physical characteristics and end-use of the product. They basically said that B20 is not used for consumption in the EU but rather an even lower blend which is B5. Hence the like product was wrongly defined. They also claimed that the definition of the product concerned cannot be changed whilst maintaining a different like product.
- (43) As it clearly appears in recital (29) to (35) of the provisional Regulation, the definition of the like product is linked to the identification of the product concerned and was mainly established in term of physical characteristics of the product. The actual end-use was also considered and it was considered that the threshold of B20 should also be maintained for the definition of the like product. In this case, the number of product types covered by the like product has also been reduced to match with the definition of the product concerned.
- (44) Hence, the claims of the parties that the definition of the like product was incorrect have to be rejected and the provisional definition of the like product can be confirmed.

3. DUMPING

3.1. Preliminary remark

- (45) Following the disclosure of the provisional findings, several exporting producers as well as NBB claimed that an adjustment should have been made in the dumping calculations to eliminate the impact of subsidisation. According to them, disregarding the effect of the subsidy granted both on domestic and export sales resulted in the understatement of revenues, affecting both the normal value for the like product and the export price determination for the product concerned. Consequently, the normal value was affected since the ordinary course of trade test was determined based on sales prices that did not take into account the revenue generated by sales of the product benefiting from the subsidy whilst the export price was equally understated for the same reason. These parties further alleged that the non-adjustment of the subsidy constituted a manifest

⁽¹⁾ Case T-348/05: JSC Kirovo-Chepetsky Khimichesky Kombinat v. Council, 10 September 2008, paragraphs 61-63.

error in the application of Articles 2(4) and 2(10) of the basic Regulation because it contributed to the use of constructed normal values whilst the production and sales of the product concerned were in reality profitable if account was taken of the subsidies. It is recalled that according to the findings of the investigation, the US authorities granted a so-called blender's credit of 1 USD per gallon of pure biodiesel present in the blend of biodiesel with mineral diesel.

- (46) Accordingly NBB claimed that in order to ensure a fair comparison and functional symmetry between normal value and export price under Article 2(10) of the basic Regulation, the blender's credit should be added not only to the normal value but also to the export price.
- (47) As explained in recital (38) of the provisional Regulation, the circumstances in which a subsidy could lead to an adjustment as claimed by NBB to avoid a double remedy in the case of parallel anti-subsidy and anti-dumping investigations for the same product are expressly provided in Article 24(1) of the anti-subsidy basic Regulation which states that no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. Such circumstances do not arise in the current case. Indeed, the blender's credit is a subsidy available for both domestic and export sales exactly in the same way and for the same amount and does not therefore constitute export subsidisation within the meaning of Article 24(1). This was not challenged by NBB. Therefore, the claim that the blender's credit should be 'adjusted' in the dumping calculations was considered unwarranted and was therefore rejected.
- (48) In the absence of any other comments which would alter the provisional findings in this respect, recitals (36) to (38) of the provisional Regulation are hereby confirmed.

3.2. Normal value

- (49) Following the disclosure of the provisional findings, one exporting producer pointed to a clerical error in the calculation of the normal value of a certain product type based on the domestic sales price. This clerical error was corrected.
- (50) Another exporting producer, which had no representative domestic sales, disputed the use of the weighted average profit margin of other exporting producers subject to the investigation in respect of their production and sales of the like product on the domestic market, when constructing the normal value. It claimed that instead of using the average profit margin of the two integrated producers which were profitable on their domestic sales in the IP, the average profit used should have been that of the non-integrated producers. Given that the company acquired its feedstock in the open market, it claimed that it could not be compared with the two fully integrated producers, which it claimed were not representative of the market conditions of all other sampled exporting producers.
- (51) The above claim was considered warranted, since indeed it can be argued that the situation of the two integrated producers may not be directly comparable to that of the other sampled producers in that they are fully integrated and have access to their own feedstock. However, the suggestion to use the average profit margins of the non-integrated producers was not possible since none of these producers were profitable on their domestic sales in the IP. It was therefore considered reasonable, in accordance with Article 2(6)(c) of the basic Regulation, to base the profit on the profitable domestic sales transactions of all sampled exporting producers with domestic sales instead. This profit was then used for constructing the normal value of the said exporting producer.
- (52) Following final disclosure, one exporting producer group claimed that the profit margin used for constructing the normal value of the product types which were not sold on the domestic market in the IP was not reasonable. It argued that the normal value should have been established based on the product types for which the normal value was not constructed, applying an adjustment for physical differences, in accordance with Article 2(10)(a) of the basic Regulation. It further claimed that the adjustments made in the context of calculating the injury margins should have been applied also for the calculation of the normal value.
- (53) In this respect it is noted that the purpose of the adjustments mentioned in Article 2(10) of the basic Regulation is to allow a fair comparison between the normal value and the export price and not to establish normal value. The purpose of the adjustment made in the injury calculations was to make the imports of US biodiesel comparable with the biodiesel produced and sold by the Community industry on the Community market. As described in recital 46 of the provisional Regulation, the profit used for the constructed normal value is determined in accordance with Article 2(6) of the basic Regulation. Therefore, this claim was not considered warranted and had to be rejected.
- (54) In the absence of any other comments concerning the normal value, which would alter the provisional findings, recitals (39) to (48) of the provisional Regulation are hereby confirmed.

3.3. Export price

- (55) One exporting producer contested the determination of the profit margin for its related importer in the Community, claiming that certain costs, such as ocean freight and insurance costs were not included in the cost of goods sold.
- (56) This claim was found to be warranted and the cost of goods sold of the related importer was revised based on the FOB purchase price to which all costs in obtaining the product concerned were added, such as commissions, transport, insurance and handling costs, and customs duties paid.
- (57) The same exporting producer claimed that the results of certain settled hedging operations at the level of the same related importer were unjustly apportioned to the operational result of the product concerned, whereas they were strictly related to operations on the acquisition and sale of another product.
- (58) The company provided evidence showing that the results of the settled hedging operations referred exclusively to individual sales contracts regarding a product that was not the product concerned and consequently did not influence the SG&A expenses related to the product concerned.
- (59) In view of the above, since these operations were found not to relate to the product concerned it was decided not to incorporate these results in the determination of the SG&A expenses of the related importer.
- (60) Following final disclosure, one exporting producer group disputed the exclusion from the calculations of the part of its biodiesel exports to the Community that had been further blended with other non-US biodiesel and resold in the Community as a blend of both origins. The group claimed that there was no discretion in the basic Regulation or in the WTO Anti-dumping Agreement to allow for this exclusion. In this respect the USG stated that the Commission did not sufficiently document and justify the changes between the provisional and definitive determination.
- (61) In the light of the comments received and the alternative method proposed by the exporting producer group in question to establish a reliable export price from the blends resold in the Community, the Commission reassessed the determination of the export price. The method put forward by the group could not be followed as it failed to individually identify the relevant export price for the imported biodiesel components of the blend that was subsequently resold on the

Community market. However, in line with the methodology applied in the injury calculations, the resale price of the blend sold on the Community market was brought to rapeseed feedstock equivalent and the ex-works export price was constructed on that basis, by deducting all costs incurred between importation and resale, in accordance with Article 2(9) of the basic Regulation.

- (62) In the absence of any other comments concerning the export price, which would alter the provisional findings, recitals (49) to (50) of the provisional Regulation are hereby confirmed.

3.4. Comparison

- (63) Two exporting producers contested the adjustments in accordance with Article 2(10) of the basic Regulation in respect of freight, handling and warehousing costs that occurred between the location of the production facilities and the terminal from which the product concerned was shipped for sale. Furthermore, one of the exporting producers claimed that in the terminal the product loses its individual identity since it is blended with other material and that as a consequence the abovementioned expenses should not be considered to be directly related to the sale.
- (64) It should be stressed that for the calculation of the dumping margins only biodiesel produced by the exporting producers investigated was taken into account, whether in a pure form or blended. Therefore disregarding certain costs that occurred after the production of the B100 base product is not considered warranted. Consequently these costs should be deducted to bring the export price to unrelated parties of all own-produced biodiesel, whether in pure form or blended, back to the ex-works level. The fact that the transport of biodiesel takes place from the factory to a terminal outside the factory does not mean that the own-produced part of the final blend would not have been subject to transport, handling and warehousing costs.
- (65) In the absence of any other comments concerning the comparison, which would alter the provisional findings, recitals (51) to (53) of the provisional Regulation are hereby confirmed.

3.5. Dumping margins

- (66) The definitive dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are the following:

Company	Definitive dumping margin
Archer Daniels Midland Company (ADM)	10,1 %
Cargill Inc.	<i>de minimis</i>
Green Earth Fuels of Houston LLC	88,4 %
Imperium Renewables Inc.	29,5 %
Peter Cremer North America LP	39,2 %
World Energy Alternatives LLC	52,3 %
Co-operating non-sampled	33,5 %

(67) In view of the changes in the dumping margins of the sampled companies, the weighted average dumping margin of the cooperating exporting producers not included in the sample was recalculated in accordance with the methodology described in recital (56) of the provisional Regulation. As indicated above, it was set at 33,5 % of the CIF Community frontier price, duty unpaid.

(68) The basis for establishing the country-wide dumping margin was set out in recital (57) of the provisional Regulation. On the same basis, the country-wide dumping margin was definitely set at 39,2 %.

4. COMMUNITY INDUSTRY

4.1. Community production and standing

(69) One interested party contested the exclusion from the assessment of total Community production of the group of producers related to an exporting producer in the USA mentioned in recital (60) of the provisional Regulation on the basis of Article 4(1) of the basic Regulation. It argued that the correct denominator to establish support to the complaint should be kept at around 5 400 thousand tonnes and not decreased to between 4 200 to 4 600 thousand tonnes as was done at provisional stage.

(70) The relevant provisions of the basic Regulation to assess standing or the support for the investigation are Article 4(1) and Article 5(4) of the basic Regulation. For information, the relevant provisions of the Anti-Dumping Agreement (ADA) concerning the definition of the domestic industry are contained in Article 4(1) of the basic Regulation. From these provisions, it is clear that the definition of the domestic production to establish standing should be made in conjunction and is

subject to the same requirements as those for the definition of the domestic industry. In any case this claim is not such as to alter the conclusion that the investigation was supported by a major proportion of Community production. Even if the denominator was kept at 5 400 thousand tonnes, the support for the investigation would be above 50 %, namely largely above the requirements of the basic Regulation.

(71) The same interested party argued that in the light of the definition of the product concerned and the like product which is biodiesel whether in pure form or in blends containing more than 20 % biodiesel (B20), the Community industry and Community production must be composed of all Community companies producing biodiesel and blends above B20. It claimed that there is no evidence that the complainant or the Commission has sought to include these companies into the total production or determined that these producers supported the complaint.

(72) In this regard it is noted that the total Community production figure indicated in recital (60) of the provisional Regulation does indeed take into account the production volume of biodiesel in blends above B20. It can further be clarified that according to available information, the production in the Community of blends containing between 21 % (B21) and 99 % (B99) of biodiesel has been very limited during the IP. The only production of blends in this range was concentrated on blends of B30 and did not exceed 60 000 tonnes in terms of biodiesel content. Moreover, the Commission has contacted known producers of B30 after the imposition of provisional measures and the responses received from two of the producers indicate that they support the complaint.

(73) In the absence of any other comments recitals (59) to (61) of the provisional Regulation concerning the definition of Community production, Community industry and standing are hereby confirmed.

4.2. Sampling

(74) One party argued that the performance of one sampled Community producer that failed to cooperate in the investigation was very good and it should have been taken into account in the assessment of injury to the Community industry. It was claimed that this producer was not injured during the IP and that best facts available should be used in accordance with Article 18 of the basic Regulation. In this regard, the party suggested, using the publicly available financial data of this producer for 2007 and 2008, for the examination of injury to the Community industry.

- (75) It is common practice in anti-dumping investigations that the Commission excludes producers that failed to cooperate for the purpose of the assessment of injury and not to use facts available in line with Article 18 of the basic Regulation. The data concerning injury cover an extended period of four years and it is not possible to obtain based on public sources all the necessary information to establish all injury indicators for the whole period. In this particular case, the said Community producer was excluded from the investigation because it had failed to provide complete meaningful information for the years 2004 to 2006 and it only provided partial information for 2007 and the IP. Using the public information for this producer's biodiesel activity for 2007 and 2008, would not have allowed to obtain data for all injury factors and for all the years of the period considered. This would have distorted the trends which are relevant for the assessment of injury.
- (76) Moreover, maintaining the said producer in the sample would have not allowed the assessment of undercutting to be made for the totality of the sales of the sampled producers as the said company did not provide a listing with its detailed sales by product type for the IP. Finally, it is noteworthy that contrary to the claim made by the interested party, the financial performance of the said producer, in terms of profitability as shown in its publicly available data, was well below the average profitability established for the cooperating sampled Community producers as shown in Table 7 of the provisional Regulation. On the basis of the above the request made by this party had to be rejected.
- (77) The same party claimed that the sample of Community producers was not representative of the Community industry as it was based only on producers of pure biodiesel (B100) and therefore failed to include producers of blends from B99 down to B20 as well as blenders of B100.
- (78) In this regard it is recalled that, as mentioned in recital (72) above, the Community production of biodiesel blends between B20 and B99 has been very limited during the IP. In view of this limited quantity, which represents less than 2 % of total Community production of the like product in the IP, it can be concluded that the selection of the sample which was mainly based on the largest volume of production and sales within the Community was representative. As far as the blenders of B100 is concerned these companies could not be considered as producers of the like product as they are processing by a simple blending operation an existing like product. The claim was therefore rejected.
- (79) In the absence of any other comments recitals (62) to (64) of the provisional Regulation are hereby confirmed.

5. INJURY

- (80) As mentioned in recital (16) above, the examination of the trends concerning the assessment of injury covered the period from January 2004 to the end of the IP. However the investigation showed that the Community industry was practically starting up in 2004. It was, thus, considered more appropriate to make an analysis on the possible injury and the economic situation of the Community industry based on trends for the period 2005 to the IP ('period analysed'). As no party commented on this approach, recital (65) of the provisional Regulation is confirmed.

5.1. Community consumption

Table 1

Community Consumption	2004	2005	2006	2007	IP
Tonnes	1 936 034	3 204 504	4 968 838	6 644 042	6 608 659
<i>Index 2005=100</i>	60	100	155	207	206

- (81) In the absence of any comments that could justify a change concerning the Community consumption as shown in the above table, recitals (66) to (71) of the provisional Regulation are hereby confirmed.

5.2. Volume of imports from the country concerned and market share

- (82) The table below shows the total imports into the Community market made by US exporting producers during the period considered.

Table 2

All imports from USA	2004	2005	2006	2007	IP
Tonnes	2 634	11 504	50 838	730 922	1 137 152
<i>Index 2005=100</i>	23	100	442	6 354	9 885
Market share	0,1 %	0,4 %	1,0 %	11,0 %	17,2 %
<i>Index 2005=100</i>	25	100	250	2 750	4 300

Source: US export statistics.

- (83) For the purpose of the definitive findings it was found that one US exporting producer was found not to be dumping its products on the Community market, hence the total volume and price of dumped imports had to be reassessed. In this case, when using sampling to establish dumping it is the Commission practice to then examine whether there is positive evidence showing whether or not all the companies which were not sampled were effectively dumping their products on the Community market during the IP.
- (84) To this end, the export prices charged by the cooperating exporting producers not included in the sample and the export prices of the non-cooperating exporters were investigated on the basis of US export statistics, the questionnaire responses of the sampled exporting producers in the USA and the replies to the sampling forms provided by all the cooperating companies in the USA. It was considered that by adding the average dumping margin found on the basis of the sampled exporting producers to the average export prices established for the sampled exporting producers found to be dumping, the level of non-dumped export prices for the product concerned would be set.
- (85) The export price was established for the non-sampled exporting producers on the basis of the US export statistics after deducting the exports data concerning the sampled exporting producers. The resulting price was then compared with the non-dumped export price.
- (86) This price comparison showed that both i) the cooperating exporting producers which were not included in the sample and ii) the exporting producers which did not cooperate in the investigation had average export prices which were in all cases below the average non-dumped prices established for the sampled exporting producers. This was sufficient indication that the imports from all companies that were not sampled, namely the cooperating and non-cooperating ones, could be considered as being dumped.
- (87) Concerning the non-sampled companies, the information available and the data submitted concerning their export price did not show that their prices were above the non-dumped price established as explained in recital (84) above.
- (88) As mentioned in recital (83) above, it was found at the definitive stage that one exporting producer in the USA included in the sample was not dumping its products on the Community market. Accordingly, its exports were excluded from the analysis concerning the development of dumped imports on the Community market.
- (89) However, in order to avoid any possibility of disclosing sensitive business data pertaining to the said producer, it was considered appropriate for confidentiality reasons not to present publicly available data, such as the US export statistics, excluding the data of the exporter not found to be dumping on the Community market.

- (90) Therefore, the table below comprises all imports of biodiesel originating in the USA which were found or considered to be dumped on the Community market during the period considered in an indexed form.

Table 3

Dumped imports from USA	2004	2005	2006	2007	IP
<i>Indexed volumes 2005=100</i>	—	100	411	5 825	9 261
<i>Index market share 2005=100</i>	—	100	265	2 810	4 490

Source: US export statistics and replies to sampling forms of non-dumping US companies.

- (91) The new figures show that the import volumes from the USA increased significantly from more than 10 000 tonnes in 2005 to more than 1 000 000 tonnes in the IP. During the period analysed, the dumped imports from the USA continuously increased their share of the Community market from around 0,3 % in 2005 to more than 15 % in the IP. Therefore it remains that there has been a significant increase in dumped imports both in absolute terms and in relative terms compared to the Community consumption over that period.
- (92) One interested party claimed that the injury and causation analysis of the anti-dumping proceeding should be made on different data than that made in the parallel anti-subsidy proceeding. It was argued that the dumping findings, in particular the export sales to the Community, are based only on the own produced biodiesel of the sampled producers whereas the subsidy findings are based on i) own produced, ii) produced and blended and iii) purchased and blended biodiesel exported to the Community.
- (93) This claim would appear to suggest that the anti-dumping proceeding should always be based on a narrower data in relation to the anti-subsidy proceeding. However, at provisional stage it was found that all the exports of the companies included in the sample of US producers were made at dumped prices in the Community market. A similar finding was made in the anti-subsidy investigation. Thus in both investigations all exports made from the USA were deemed to be dumped and subsidized and were thus all included in the injury and causation analysis.
- (94) The fact that, as explained in recital (83) above, at definitive stage, one sampled US company was found not to be dumping has now led to a discrepancy between the volume of dumped imports and the volume of subsidized imports to be considered in the injury and causation analysis of the proceedings. The overall volume of dumped imports from the USA was adjusted to take into account the fact that the imports of one sampled exporting producer were found not to be dumped.
- (95) In view of the above the claim had to be rejected.
- (96) One interested party claimed that the HTS heading 3824 90 of the US export statistics which was used in the provisional Regulation to establish the imports from the country concerned would also cover, in addition to biodiesel, other products such as 'fatty substances of animal or vegetable origin and mixtures thereof'. The analysis of the import volume from the USA was therefore deficient. The same interested party proposed that the trends established for the investigated US producers be used instead.
- (97) In this regard, it is firstly noted that the US HTS code 3824 90 4000 was used in order to compute the import volumes originating in the USA and not the six-digit HTS heading claimed by this party.

- (98) Moreover, it is recalled that as mentioned in recital (68) of the provisional Regulation, Eurostat data could not be used for the purpose of assessing the imports of biodiesel from the USA because until the end of 2007 there was no distinct CN code available for the customs classification of that product. Biodiesel could indeed have been classified under various CN codes which also contained import data for other products. The reason why the USA export statistics were used was that they appeared to capture the exports of the product concerned under one tariff code and that the volume of other products captured under the same code would be of insignificant importance as far as exports to the Community are concerned.
- (99) In view of the limitations to use Eurostat data, another alternative to the US export statistics would have been to use the import data reported in the complaint. This data was obtained by the complainants from confidential market intelligence sources and therefore recourse to such information would have been subject to this limitation. However, for the sake of completeness the trends of import volumes would have shown the following picture in an indexed form:

Table 4

Imports from USA	2004	2005	2006	2007	IP
<i>Indexed 2005=100</i>	0	100	1 359	15 059	15 394

- (100) The comparison of the Table 4 above with Table 2 would demonstrate that the Commission's assessment of the import volumes of the product concerned over the analysis period was more conservative than the one that could have been alternatively used. Moreover, this overall picture of the import volumes of Table 4 is compiled from confidential data not susceptible to disclosure whereas the USA statistics is publicly available information.
- (101) The proposed method by the interested party would have shown the following picture regarding the trends of the export volumes on the basis of the information collected from the investigated exporting producers:

Table 5

Imports from USA	2004	2005	2006	2007	IP
<i>Indexed 2005=100</i>	16	100	461	6 180	9 005

- (102) The comparison of Table 5 with Table 2 above would demonstrate very similar trends between the method used by the Commission and the one proposed by this party.
- (103) The same interested party also claimed that, because the product concerned is biodiesel and blends of biodiesel with a biodiesel content above 20 %, the volume of imports shown in Table 2 above could not correlate with the correct import volume for the product concerned.
- (104) In this regard it is noted that the investigation has not identified any imports of the product concerned with a biodiesel content above B20 but below B99 during the IP. In other words the investigation has not identified any imports of the product concerned that because of their low biodiesel content would be classified under a different US HTS code.
- (105) On the basis of the above it is concluded that the import volume presented in the Table 2 of the provisional Regulation represents a reliable, objective and conservative estimation of the imports into the Community of the product concerned.
- (106) One interested party claimed that the *splash and dash* quantities exported from the USA should have been distinguished from the imports of the product concerned originating in the USA as the former cannot be treated as imports of US origin.

- (107) In addition the same party and the USG claimed that contrary to what was stated in recitals (77) and (80) of the provisional Regulation all exports from the USA are not deemed to be originating in the USA. There is no authority in the USA that makes an assessment or a determination with respect to the country of origin of a particular product for export and it cannot be assumed that all biodiesel leaving the territory of the USA is of US origin.
- (108) The same party also stated that the origin regulations established by the US Census Bureau regarding the determination of the origin of the exported goods are not widely known to the biodiesel industry and therefore the exporters of biodiesel when filling out the 'Shipper's Export Declaration' (SED) normally indicate that the goods exported are of domestic origin.
- (109) It further reiterated its claim made at provisional stage that volumes imported in the Community under the *splash and dash* pattern would represent more than 40 % of the product concerned exported from the USA. In support of its claim it used the US import and export data of the HTS codes 3824 90 4020 and 3824 90 4000, and practically claimed that all imports of biodiesel in the USA were re-exported under the *splash and dash* pattern to the Community.
- (110) On the above it is noted that the clarification requested by the US authorities regarding the fact that no US authority makes an assessment or determination of the origin of a particular product for export can be accepted.
- (111) The claim that *splash and dash* would represent at least 40 % of the US exports to the Community was based on the assumption that all biodiesel imported in the USA would ultimately be re-exported to the Community under the *splash and dash* pattern without any volume being consumed in the USA or further being blended in the USA before exportation.
- (112) However, the data presented by this party showed that in the years 2004 to 2006 the imports exceeded by far the exports which would suggest that there is a domestic demand for biodiesel in the USA from other countries. Moreover, this assumption is rather simplistic as it does not take into account the quantities of biodiesel blended in the USA and exported to the Community in which i) the characteristics of the blends are different from those of the input materials which would confer US origin to the blended product or ii) blends in which the proportion of US origin biodiesel being the dominant one would confer US origin to the whole blended product. It is recalled in this respect that, as mentioned in recital (78) of the provisional Regulation, the US companies investigated declared that it was not possible to differentiate in the quantities exported to the Community or sold on the domestic market the quantities own produced or sourced in the USA or those imported. It is also noted that the origin would appear to have correctly been declared by the US companies concerned as in all of the cases further blending of non-US origin biodiesel was taking place in the USA. Indeed, in most of the cases the investigated exporting producers are very large companies or groups of companies with related companies in the Community for which it is difficult to accept that they were not aware of the existing US and Community rules regarding the origin determination.
- (113) On the basis of all the above it is concluded that there are no grounds to clearly identify the imports made in the Community under the *splash and dash* pattern for the period considered. It is also considered that there are no grounds to treat these exports, if any, as non-US origin imports.

5.3. Prices of the dumped imports and price undercutting

5.3.1. Unit selling price

- (114) The table below shows the unit selling price of all imports into the Community market originating in the USA during the period considered as ascertained in recitals (81) and (82) of the provisional Regulation.

Table 6

All imports from USA	2004	2005	2006	2007	IP
Prices in EUR/tonne	463	575	600	596	616
Index 2005=100	81	100	104	104	107

Source: US export statistics and questionnaire replies of the sampled US exporters.

- (115) In view of the definitive findings concerning dumping, and the fact that one company was found not to be dumping its products on the Community market, the unit selling prices of dumped imports into the Community market were calculated separately and are presented in the following table.

Table 7

Dumped imports from USA	2004	2005	2006	2007	IP
Prices in EUR/tonne	463	575	608	603	615
Index 2005=100	81	100	106	105	107

Source: US export statistics and questionnaire replies of the sampled dumping US exporters.

- (116) Average prices for imports from the USA fluctuated during the period considered and overall showed an increase of 6 % between 2005 and the IP.

5.3.2. Price undercutting

- (117) For the purpose of analysing price undercutting, the weighted average sales prices of the sampled Community producers charged to unrelated customers on the Community market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the dumped imports from the USA, established on a CIF basis for the sampled exporting producers in the USA which were found to be dumping into the Community market. An adjustment for the customs duties, post-importation costs and for the differences in feedstock used for the production of biodiesel was applied where appropriate as described in recital (84) of the provisional Regulation.

- (118) Certain exporting producers claimed that the adjustment for the differences in feedstock was understated as it did not reflect correctly the market value of the differences. They further claimed that the differences should be obtained on the basis of the prices for the different types of biodiesel in the Community market and quantified this claim by reference to the price quotations, customs cleared Antwerp based, published by a market analyst.

- (119) In this regard it is noted that the adjustment was based on the overall, verified data collected from the sampled

exporting producers for their operations in the USA and was, therefore, based on the findings of the investigation which is the most reliable source of information. Moreover, the price quotations at Community level would have been an inappropriate basis for this adjustment as these price levels would have been influenced by the price levels of the dumped imports originating in the USA. On this basis the claim was rejected.

- (120) The same exporting producers claimed that the adjustment for feedstock differences should only be applied to the sales of the sampled exporting producers and not to the sales of the sampled Community producers as the sales of the latter consist of blends compatible with the Community standards.

- (121) This claim was found to be irrelevant as the purpose of the adjustment was to address the differences in feedstock and not any differences in meeting the different standards applicable at Community level. The claim was, therefore rejected.

- (122) The complainant contested the appropriateness of this adjustment by claiming that both Community producers and US exporters use a variety of feedstock and both produce a variety of blends which are provided on both markets and are, therefore, operating with the same range possibilities when it comes to the raw material choice.

(123) In this regard it is noted that, whilst it is true that both Community producers and US exporting producers use a variety of blends based on different feedstock, the repartition of feedstock in the blends may differ significantly from producer to producer and even from customer to customer of the same producer. Indeed, the investigation has shown that a precise matching in the blends sold by the sampled Community producers and those sold by sampled exporting producers on the Community market was met in very few occasions. Therefore, in order to allow for undercutting calculations to take into account the different product types of biodiesel, it was considered indeed necessary to make the adjustment for differences in feedstock. Therefore, this claim had to be rejected.

(124) Certain exporting producers claimed that the prices used for the injury margin calculations were the CIF Community frontier prices rather than the resale prices to the first unrelated customer. They claimed that these calculations have to be corrected in order to take into account the value and quantities of sales to the first unrelated customer.

(125) This claim was found to be relevant for two exporting producers and the injury calculations were corrected accordingly.

(126) On the basis of the above, the average price undercutting margin in the IP, expressed as a percentage of the Community industry's weighted average ex-work prices, was found to range from 18,9 % to 31,9 %, instead of a range from 18,9 % to 33,0 % at provisional stage.

5.4. Economic situation of the Community industry

(127) As mentioned in recitals (107) to (110) of the provisional Regulation, it was found that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

(128) Indeed, the provisional analysis showed that the performance of the Community industry improved as regards some volume indicators, but that most of the indicators related to the financial situation of the Community industry significantly deteriorated during the period considered. Notwithstanding the Community industry's ability to raise capital for investments, return on investments declined dramatically during the IP and profitability declined significantly over the period considered.

(129) One interested party claimed that the analysis made in recital (93) of the provisional Regulation regarding the growth of the Community industry was incorrect. In particular, this party argued that the provisional Regulation suggested that the strong increase in demand for

biodiesel in the Community market was supposed to lead to a comparable increase in the market shares of the Community industry, while there is no direct correlation between the increase in demand and market share.

(130) The same party further argued that the injury factors mentioned in the same recital (93) of the provisional Regulation, namely production, utilisation of production capacity, productivity, sales, investment policy, return on investments, cannot be considered as severely affected.

(131) The argument regarding the de-correlation between demand and market share is accepted. However, it remains that between 2006 and the IP, the market share of the sampled Community producers was multiplied by 1,2 while during the same time, the market share of dumped imports was multiplied by around 17. This comparatively strong increase in market share for US imports is the result of much lower sales prices for these US imports as shown in table 7 and recital (126) above.

(132) Regarding the claim about the global assessment of all injury factors, it is acknowledged that not all these factors were deteriorating during the period considered. However, it is stated that factors relating to financial situation of the Community industry were indeed severely affected, namely the profitability and the return on investment and to a lesser extent productivity was affected. This stems from the fact that the Community industry had to adapt to the competition of price-setting dumped US imports, and chose to maintain their presence on the market to the detriment of their profitability, rather than preserving their profitability but losing market shares.

(133) Certain interested parties and the USG claimed that the levels of profitability and return on investment for the sampled EU producers are still good in 2007 and during the IP, in absolute value, in spite of the strong decrease compared to the previous years. They argue that the levels of profitability and return on investment achieved from 2004 to 2006 were not sustainable and that the EU biodiesel industry, as all nascent industries, experienced a normal 'boom and bust' phenomenon during the period considered.

(134) In this regard, it is recalled that some US sampled companies achieved much higher profitability, exceeding 30 %, in the similar context of a developing market during the period considered. It is also stated that the decrease of profitability and return on investment experienced by the Community industry was very brutal since it occurred from 2006 to 2007, and coincides exactly with the surge of US imports of biodiesel.

(135) Several Community producers claimed that the situation of non-sampled Community companies should be fully taken into account in the injury assessment, in particular in the light of the numerous cases of downsizing, closures or postponement of new projects that were identified among these companies during the period considered.

(136) On the other hand, one interested party claimed that the reference made in the provisional Regulation to producers in the Community not included in the sample is irrelevant, as the unverified data from non-sampled producers cannot be used for the demonstration of injury. This party further insists on public data showing that some of these non-sampled producers are profitable.

(137) Regarding the two claims above, it is recalled that the provisional Regulation in its recitals (103) to (106) refers to the situation of the non-sampled producers in the Community as a supplementary indication of injury, without impacting the calculations of the injury indicators and injury margin for which verified information was actually used. Therefore the claim of this party was rejected. On the other hand, in the absence of available verified statistics or individual information regarding the situation of all non-sampled EU producers, it is not possible to make any accurate determination for the Community producers as a whole as suggested by the Community producers. This claim was therefore also rejected.

(138) In the absence of any other comments on the provisional findings concerning the economic situation of the Community industry, recitals (86) to (92) and (94) to (106) of the provisional Regulation are hereby confirmed.

(139) The conclusion that the Community industry suffered material injury, as set out in recitals (107) to (110) of the provisional Regulation, is also confirmed.

6. CAUSATION

6.1. Effect of the dumped imports

(140) It is recalled that the dumped import volumes from the USA increased significantly during the period analysed. There was also a clear coincidence in time between the surge of dumped imports and the deterioration of the economic situation of the Community industry. That industry was not able to set its prices in line with market conditions and the cost increases, as its prices were undercut during the IP by the dumped imports.

(141) It is therefore confirmed that the surge of low-priced dumped imports from the USA had a considerable negative impact on the economic situation of the Community industry during the IP.

6.2. Effect of other factors

6.2.1. Imports from other third countries

(142) In the absence of any comments that would justify a change in the provisional findings it is confirmed that imports from other third countries cannot have made more than negligible contribution to the injury suffered by the Community industry.

6.2.2. Development of demand

(143) One interested party claimed that the contraction in demand between 2007 and the IP even being negligible (0,5 %) would nevertheless have caused injury to the Community industry by alleging that an hypothetical increase of 10 % in demand would have yielded an additional volume of sales of 205 733 tonnes if the Community industry would have maintained the same market share of 29,8 % that was recorded during the IP.

(144) In this respect it is noted that the claims made by this party were based on broad and unsubstantiated assumptions. Moreover, in view of the fact that between 2007 and the IP the market share of the Community industry increased by 2,8 percentage points, would indeed support the conclusion reached in recital (121) of the provisional Regulation that injury suffered by the Community industry cannot be attributed to this slight contraction in demand between 2007 and the IP. Therefore, in the absence of any other comments concerning the development of demand on the Community market recital (121) of the provisional Regulation is confirmed.

6.2.3. Public Policy Decisions

(145) One interested party reiterated its claim that the reintroduction of energy tax in Germany would have negatively influenced the economic situation of Community producers supplying that market as because of these measures the biodiesel demand for B100 representing at least 1,5 million tonnes would have collapsed. It further claimed, in response to the findings of the investigation set in recital (123) of the provisional Regulation, that even if the introduction of a blending requirement of 4,4 % for the diesel placed in the German market for transport purposes (B5) would have compensated the alleged sales losses of B100, the prices levels of B100 would be different from those of biodiesel intended for the B5 blends. It alleged that B100 was produced only from the more expensive rapeseed feedstock, whereas biodiesel B5 from a variety of feedstock, thus having a negative influence on the average price of the Community producers.

(146) In this respect it is recalled that, contrary to the allegations made by this party, the investigation has shown that the sales volumes of the sampled Community producers supplying the German market rose by 68 % between 2006 and the IP, which would indeed confirm

the provisional finding that any losses on B100 sales were compensated by the mandatory blending requirement. It is further noted that the introduction of the EUR 0,09 per litre of biodiesel as of 1 August 2006 did not lead to the collapse of the market as alleged by this party, but indeed B100 sales were reduced significantly in the last quarter of the IP when this tax was further increased to EUR 0,15 per litre as of 1 January 2008. Regarding the effect on prices, the allegations made by this party were unfounded as the biodiesel used for both types of products had to conform with the same standards which means that in both biodiesel fuels the same mix of feedstock could be used which means that there is no proven price differentiation between the two types of biodiesel. On the basis of the above the claim was rejected.

- (147) In the absence of any other comments concerning the public policy decisions recital (124) of the provisional Regulation is confirmed.

6.2.4. Idle production capacity of Community producers

- (148) One interested party, whilst accepting that capacity utilisation rates remained fairly high for the sampled Community producers, claimed that the overcapacity of the sampled Community producers would still be a cause of injury in view of the fact that it would result in higher fixed costs that would have a negative effect on profitability. It further claimed that the increase in the net asset value of the said producers would have resulted in fixed cost increases as depreciation and financial costs would have been higher.

- (149) In this regard it is recalled that from detailed analysis of the repartition of variable and fixed costs in the cost structure of the Community industry it was established that the share of fixed costs represented only 6 % of overall costs (recital 126 of the provisional Regulation). In addition, it should be noted that this analysis showed insignificant fluctuations of this percentage over the period analysed. With regard to the claim concerning the effect on profitability caused by the increase in the net asset value, it should be noted that the increase in costs in absolute terms, does not automatically lead to an increase in the unit production cost as the latter depends on the volume of output which as shown in Table 4 of the provisional Regulation increased steadily over the period analysed. Therefore higher fixed costs in absolute terms were attributed to higher output volume resulting in the above mentioned repartition of fixed costs in relation to overall costs. On this basis the claims made by this interested party had to be rejected.

- (150) The same party alleged that overall overcapacity of the Community producers has a direct impact on prices as there would be a fierce battle among producers to gain

contracts up to marginal costs and therefore, producers with high utilisation rates must have been the most aggressive on their sales to undercut the price of their competitors. In support of its claim it submitted an announcement of one sampled company to its financial statements of year 2007.

- (151) The allegations, however, of this party were not supported by any evidence as no reference to the alleged battle of prices due to overcapacity was indicated in this statement. The statement rather referred to the increase by the German government of the energy tax on B100 biodiesel as of 1 January 2008 which stimulated competition in the B5 market of biodiesel. On the basis of the above the claim had to be rejected.

- (152) In the absence of any other comments concerning the idle capacity of Community producers, recitals (125) to (128) of the provisional Regulation are confirmed.

6.2.5. Increased demand for feedstock and increasing prices

- (153) One interested party and the US government claimed that none of the arguments in recitals (129) to (133) of the provisional Regulation addresses the issue that the prices of soybean oil, palm oil and canola oil in the USA at all times since 2004 remained significantly below the prices for rapeseed in the Community which yields a significant competitive advantage to the biodiesel imported from the USA.

- (154) It is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

- (155) In practice, the effect of the dumped imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may need in certain cases to be adjusted in order to have a comparable basis. Consequently, the use of adjustments in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the prices of raw materials in the exporting country cannot in principle be another factor of injury.

(156) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports. To summarise, if the imports are dumped, and even if they benefited from a favourable development of raw material prices, it is not considered that such development could be another factor causing injury.

(157) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, such as the alleged competitive advantage due to lower raw material prices, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation.

(158) In any event, and without prejudice to the above, it has to be recalled that a general increase in prices of agricultural products worldwide took place during the IP and that the increase in soybean oil (the main feedstock used by the producers in the country concerned) was more pronounced than the increase of rapeseed oil over the same period. However, these increases in costs in the USA were not reflected in the prices of the dumped imports in the Community market which significantly undercut the prices of the Community industry.

(159) In light of the above, the claim made by these parties had to be rejected.

(160) In the absence of any other comments concerning the increased demand for feedstock and increasing prices recitals (129) to (136) of the provisional Regulation are confirmed.

6.2.6. Price development of mineral diesel

(161) One interested party reiterated its claim (see recital 134 of the provisional Regulation) and further argued that the prices of mineral diesel would set a cap beyond which the producers of biodiesel would not be able to increase their prices in line with the increases in feedstock.

(162) In this regard it is noted that all of the Community producers were supplying markets where mandatory blending targets exist. In addition, biodiesel was subject to detaxation in most of the Member States which means that its price is comparable with the price of mineral diesel increased with a factor to take into account the energy tax that the latter is subject to. This means that while one can accept a certain correlation with the oil prices, the investigation has established that for the above

reasons biodiesel can be indeed sold at higher prices than mineral diesel. Moreover, this party did not submit any convincing evidence showing that the prices of mineral diesel which were at very high levels in the second half of the IP exerted price pressure on the prices of biodiesel of the Community producers during the IP.

(163) In the absence of any other comments concerning the price development of mineral diesel it is concluded that this factor has not caused injury to the Community industry.

6.2.7. Importance of the location of the biodiesel plants in the Community

(164) In the absence of any other comments concerning the location of biodiesel plants in the Community recitals (137) to (139) of the provisional Regulation are confirmed.

6.2.8. Producers related to the US exporters

(165) In the absence of any other comments concerning the impact of imports from the USA by the Community producers related to the US exporting producers, recital (140) of the provisional Regulation is confirmed.

6.2.9. Conclusion on causation

(166) In the light of the foregoing and in the absence of any other comments recitals (141) to (143) of the provisional Regulation are confirmed.

7. COMMUNITY INTEREST

7.1. Community industry

(167) Subsequent to the provisional disclosure the Community industry producers endorsed the findings of the Commission and confirmed that the measures would be in their interest.

(168) One interested party claimed that the measures would not be in the interest of the Community industry as the measures would result in a shift of trade flows, i.e. a switch to imports from countries not covered by measures, because i) the Community market operators would continue to require cheaper biodiesel based on soybean oil and palm oil in order to complement it with the more expensive rapeseed biodiesel which is produced by the Community industry and ii) because the rapeseed oil biodiesel will not be sufficient to cover the demand.

(169) In this regard it is noted that whilst the main feedstock used by the Community industry producers is rapeseed, the same producers did not rely only on this feedstock for their biodiesel production but used also other feedstock such as soybean oil and palm oil. However, in view of the fact that very often the price of other feedstock was higher than the price of the dumped imports of biodiesel based on such feedstock, the Community industry producers were deprived from the possibility of using soybean oil and palm oil on a larger scale. It is therefore expected that the imposition of measures would also restore normal market conditions in this regard allowing the Community industry producers to adapt more efficiently their production to the different types of biodiesel needed on the Community market. On this basis the claim was rejected.

(170) In the absence of any other comments concerning the interest of the Community industry, recitals (145) to (147) of the provisional Regulation are confirmed.

7.2. Unrelated importers/traders in the Community

(171) In the absence of any reaction from importers after the imposition of provisional measures it is concluded that the effect of the measures will most likely not have a material impact on importers/traders.

7.3. Users in the Community

(172) In the absence of any reaction from users after the imposition of provisional measures, it is concluded that the anti-dumping duties will most likely not have a material impact on users.

7.4. Suppliers of raw materials in the Community

(173) In the absence of any reaction from suppliers after the imposition of provisional measures, recitals (154) to (156) of the provisional Regulation are confirmed.

7.5. Other interests

(174) Subsequent to the provisional disclosure one interested party claimed that the automobile manufacturers which have invested in producing vehicles adjusted for use with biodiesel may be unable to bring their investments to fruition by selling such vehicles should, the prices of biodiesel in the Community rise because of the measures to levels which are not competitive with those of mineral diesel.

(175) In this regard it is noted that the possibility alleged by this party could have happened even in the absence of measures, i.e. prices of mineral diesel (which depend on the crude oil prices) to drop at levels making them more competitive than biodiesel. Therefore, it would appear unreasonable to suggest that the automobile industry

has made investments without taking this parameter into account. Therefore, this claim was rejected.

(176) Subsequent to the provisional disclosure, one association of Community farmers expressed its support and indicated that the imports of US biodiesel have deprived Community oilseed producers of an outlet of around 6 millions tonnes of oilseeds, or approximately 11 % of Community oilseed production in 2007 and 2008, and led to a EUR 90 per tonne drop in the potential value of rape seed used for non-food purposes. These late comments, however, could not be verified.

7.6. Competition and trade distorting effects

(177) One interested party reiterated its comments regarding the incoherence of the anti-dumping measures with the European Union policy to promote the use of biofuels. It added that the European Union cannot depend only on rapeseed-based biodiesel produced in the Community to develop its biodiesel market.

(178) While this comment has been addressed in section 7.6 of the provisional Regulation, for the issue of rapeseed biodiesel brought up by this party reference is also made to recital (169) above.

(179) In the absence of any other comments concerning competition and trade distorting effects, recitals (157) to (159) of the provisional Regulation are confirmed.

7.7. Conclusion on Community interest

(180) Based on the above, it is concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Injury elimination level

(181) Several interested parties and the USG contested the provisional determination that a profit of 15 % would be the profit margin that could be reasonably achieved by an industry of this type under normal conditions of competition.

(182) One interested party claimed that the profit margin for the Community industry used for the determination of the injury elimination level should be set at the level of the profit realised by the Community industry during the IP, namely 5,7 %, because this profit margin would be in the range of profits realised for commodities such as biodiesel. In support of this claim it made reference to profits realised by US producers of ethanol and vegetable oils and by petroleum refineries.

- (183) It is noted that the injury elimination level has to be based on an evaluation of the profit that the industry can reasonably expect to achieve in the absence of dumped imports on the sales of the like product on the Community market. For a given investigation, the profit realised in the beginning of the period considered may be reasonably considered as the profit realised in the absence of dumped imports. Indeed, in this specific case in the early years of the period considered (2004 to 2006) the imports from the USA never exceeded a market share of 1 % and it can therefore reasonably be concluded that these periods were characterised by the absence of dumped imports. Therefore, the average profit achieved in these periods by the Community industry was considered as a reasonable basis for determination of the injury elimination level also taking into account the needs to guarantee the production investment of this newly established industry. Moreover, and in relation to the claim made by the interested party, the investigation has shown that the profits realised by the major USA exporting producers for their domestic biodiesel operations were well above the profit used for the determination of the injury elimination level. On the basis of the above the claim had to be rejected.
- (184) Certain claims from US companies regarding the conversion of the *ad valorem* duties into fixed amount duties, described in recital (193) below, revealed that the *ad valorem* underselling amount was calculated as the ratio between the total underselling and the adjusted CIF price (see adjustment mentioned in recital (117)), whereas the non-adjusted CIF price should have been used as it was done to calculate the *ad-valorem* dumping margin. Therefore all *ad valorem* injury elimination levels were recalculated for all the sampled US companies.
- (185) In the absence of other comments following the provisional disclosure, the same methodology as mentioned in recitals (164) and (165) of the provisional Regulation has been used to obtain the non-injurious prices. The injury elimination level was calculated as a percentage to the total non adjusted CIF import value.
- 8.2. Form and level of the duties**
- (186) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at a level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found.
- (187) In view of the comments received by certain interested parties following the provisional disclosure and in view of the revisions described in this Regulation, certain margins have been amended.
- (188) However, in the parallel AS proceeding, countervailing duties on imports of biodiesel originating in the USA are also imposed. The subsidies found in this parallel proceeding are not export subsidies and are therefore considered not to have affected the export price and the corresponding dumping margin. Therefore, in view of the fact that the overall imports examined are common to both proceedings, the anti-dumping duties can be imposed together with the countervailing duties to the extent that both duties taken together do not exceed the injury elimination margin (lesser duty rule).
- (189) One party claimed that the Institutions should use their discretion not to apply the lesser duty rule in this case as this is not justified for the following reasons:
- (a) there is a wide variety of critical situations faced by Community biodiesel producers, not included in the sample, which cannot be reflected to the injury margin calculations;
 - (b) it is necessary to reflect in the determination of the most appropriate measures to be imposed, the interests of the Community industry as a whole including the interests of the most vulnerable producers which were fully exposed to the unfair competition and were prevented from reaching the critical size of operations which would have justified their inclusion in the sample;
 - (c) the investigation established the high magnitude of dumping and subsidisation practices which are the primary cause of the critical situation of the biodiesel producers, including those which could not be included in the sample.
- (190) In this regard it is noted that the injury margin established in this investigation is considered adequate to remove the injury to the investigated Community industry producers. As the investigation focused on the situation of these producers it is not possible to make any accurate determination for the Community producers as a whole as suggested by this party. Therefore, these wider considerations do not allow the Institutions to deviate from the legal requirement to apply the lesser duty rule.
- (191) On the basis of the above, anti-dumping duty rates have been established by comparing the injury elimination margins, dumping margins and the countervailing duty rates. Consequently, the proposed anti-dumping duties are as follows:

Company	Injury margin	Dumping margin	Countervailing duty rate	Anti-dumping duty rate
Archer Daniels Midland Company	54,5 %	10,1 %	35,1 %	10,1 %
Cargill Inc.	—	<i>de minimis</i>	34,5 %	0 %
Green Earth Fuels of Houston LLC	51,3 %	88,4 %	39,0 %	12,3 %
Imperium Renewables Inc.	41,6 %	29,5 %	29,1 %	12,5 %
Peter Cremer North America LP	77,2 %	39,2 %	41,0 %	36,2 %
World Energy Alternatives LLC	46,1 %	52,3 %	37,6 %	8,5 %
Co-operating non sampled companies	55,3 %	33,5 %	36,0 %	19,3 %

(192) In view of the fact that the anti-dumping duty will apply to blends containing by weight more than 20 % of biodiesel, in proportion to their biodiesel content, it is considered appropriate for the effective implementation of the measures by the customs authorities of the Member States to determine the duties as fixed amounts on the basis of biodiesel content.

(193) Certain parties contested the methodology used to convert the *ad valorem* duty rates into duties in the form of fixed amounts. They claimed that the CIF values that should had been used for the conversion of an *ad valorem* duty into a fixed amount should had been the actual CIF values and not the ones adjusted to take into account the feedstock differences described in recitals (83) and (84) of the provisional Regulation.

(194) This claim was examined and it was indeed found that the adjusted CIF values were used for the conversion of the *ad valorem* duties into fixed amount duties. However, it was also found that the same values were used as the basis for expressing the underselling amount as an *ad valorem* duty. Therefore, a first correction had to be made in expressing the underselling amount as a percentage of the total actual CIF import value. On this basis the injury margins have been revised accordingly. The subsequent calculation of the fixed amount duty rates, however, showed no difference from the duty rates appearing in Article 1(2) of the provisional Regulation since the higher *ad valorem* duty was exactly offset by the decrease of the CIF prices (from adjusted to actual) used for converting the *ad valorem* duties into fixed duties.

(195) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively

applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(196) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

(197) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

(198) In order to ensure equal treatment between any new exporting producers and the cooperating companies not included in the sample, mentioned in Annex I of this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise not be entitled to a review pursuant to Article 11(4) of the basic Regulation, as Article 11(4) does not apply where sampling has been used.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, Belgium.

8.3. Undertakings

- (199) Certain US cooperating exporting producers offered price undertakings in accordance with Article 8(1) of the basic Regulation. It is noted that in view of significant price variations of the raw material, the product is not considered suitable for a fixed price undertaking. In this context, the companies proposed that the minimum import prices (MIPs) are indexed regularly in relation to the fluctuations of the prices of rapeseed oil. Moreover, they offered MIPs for three types to take account of the product variety upon importation (biodiesel obtained from soybean, palm or canola oil) on the basis of the feedstock coefficients established during the IP.
- (200) In relation to the offers of the co-operating exporting producers it is noted that the basis to establish an indexed MIP was on average between 7-8 % lower than the non injurious price established during the IP. Moreover, the proposed coefficients to arrive at adjusted MIPs for the types mentioned above were inappropriate as they related to the IP. Indeed, in view of the fact that these coefficients, which depend on the difference in price between the feedstock, continuously fluctuate, these coefficients may have considerably changed in relation to the situation observed during the IP. Therefore, the proposed indexation of MIPs for soybean biodiesel or palm oil biodiesel on the basis of price fluctuations of the rapeseed oil was considered inappropriate as it would be based on the evolution of prices of raw material different to the ones used for the production of the exported product concerned.
- (201) On the basis of the above, and without referring to any further company specific practical issues regarding their acceptance, it was considered that the undertakings, had to be rejected as the method to determine the MIPs was inappropriate and that the offered MIPs were not at levels that would eliminate the injurious dumping.

8.4. Definitive collection of provisional duties and special monitoring

- (202) Subsequent to the disclosure of final findings, the complainant requested special measures to prevent possible circumvention of the measures in view of the

fact that the market concerned is a global commodity market with a fungible product commercialised through various sales channels.

- (203) In consideration of the above, it is indeed considered appropriate to monitor closely the imports of biodiesel from all destinations, with a view of facilitating swift appropriate action should the situation so require.
- (204) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed 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, currently 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 USA.

2. The rate of the definitive anti-dumping duty applicable to the products described in paragraph 1 and manufactured by the companies below shall be:

Company	AD duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	68,6	A933
Cargill Inc., Wayzata	0	A934
Green Earth Fuels of Houston LLC, Houston	70,6	A935
Imperium Renewables Inc., Seattle	76,5	A936
Peter Cremer North America LP, Cincinnati	198,0	A937
World Energy Alternatives LLC, Boston	82,7	A939
Companies listed in the Annex	115,6	see Annex
All other companies	172,2	A999

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 193/2009 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 USA shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 3

Where any party from the USA provides sufficient evidence to the Commission that it did not export the goods described in Article 1(1) originating in the USA during the period of investigation (1 April 2007-31 March 2008) that it is not related to an exporter or producer subject to the measures imposed by this Regulation; and that it has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Community after the end of the period of investigation, the Council, acting by simple majority on a proposal by the Commission, after consulting the Advisory Committee, may amend Article 1(2) in order to attribute to that party the duty applicable to cooperating producers not in the sample, i.e. EUR 115,6 per tonne.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 July 2009.

For the Council
The President
A. BORG

ANNEX

US cooperating exporting producers not sampled

Company Name	City	TARIC additional code
American Made Fuels, Inc.	Canton	A940
AG Processing Inc.	Omaha	A942
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy, LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels, Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel, LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels, LLC	Tulsa	A940
ED & F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels, Inc.	Madison	A940
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel, LP (BioSelect Fuels)	Houston	A940
Geo Green Fuels, LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries, Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents, Inc.	Salt Lake City	A940
Incobrasa Industries, Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940

Company Name	City	TARIC additional code
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels, Inc.	Newark	A940
Iowa Renewable Energy, LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels, LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries, LLC	Wilton	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Memphis Biofuels, LLC	Memphis	A942
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels, LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County, LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels, Ltd	Houston	A940
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs, Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston, LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Scott Petroleum	Itta Bena	A942
Seminole Biodiesel	Bainbridge	A940
Soy Solutions	Milford	A940
SoyMor Biodiesel, LLC	Albert Lea	A940
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940

Company Name	City	TARIC additional code
Trafigura AG	Stamford	A940
U.S. Biofuels, Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vinmar Overseas, Ltd	Houston	A938
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel, LLC	Farley	A940
Western Iowa Energy, LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940

COUNCIL IMPLEMENTING REGULATION (EU) No 444/2011**of 5 May 2011**

extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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 anti-dumping duty imposed by Regulation (EC) No 599/2009 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

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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 13(3) 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 193/2009 ⁽²⁾ imposed a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (USA).
- (2) By Regulation (EC) No 599/2009 ⁽³⁾ (the definitive Regulation), the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198 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 598/2009 ⁽⁴⁾, the Council imposed a definitive countervailing duty ranging from EUR 211,2 to EUR 237 per tonne on imports of the product concerned.

1.2. Request

- (4) On 30 June 2010, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the possible circumvention of the anti-dumping 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 anti-dumping measures on imports of the product concerned were being circumvented by means of transshipment 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 transshipment 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 anti-dumping 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 continued 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 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 720/2010 ⁽⁵⁾ (the initiation Regulation). Pursuant to

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 67, 12.3.2009, p. 22.

⁽³⁾ OJ L 179, 10.7.2009, p. 26.

⁽⁴⁾ OJ L 179, 10.7.2009, p. 1.

⁽⁵⁾ OJ L 211, 12.8.2010, p. 1.

Article 14(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 721/2010 ⁽¹⁾ concerning the possible circumvention of countervailing 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 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 Limited,
- 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 transshipment 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 TO THE UNION V EXPORTS FROM THE USA

- (18) Following the imposition of provisional anti-dumping 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 code CN 3824 90 91 (in tonnes)

	2008	Share	2009	Share	IP	Share
USA	1 487 790	83,62 %	381 227	22,29 %	24	0,00 %
Canada	1 725	0,10 %	140 043	8,19 %	197 772	9,28 %
Singapore	179	0,01 %	20 486	1,20 %	32 078	1,50 %

Source: Eurostat.

⁽¹⁾ OJ L 211, 12.8.2010, p. 6.

- (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
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 13(1) 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 there is evidence of dumping in relation to the normal values previously established for the like product.

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.
- (27) According to the US statistics, exports of biodiesel from the USA to Canada increased from 967 tonnes in 2008 to 128 233 tonnes in 2009 and 161 841 tonnes during the IP.
- (28) A comparison of the export statistics provided by the US authorities with the import statistics provided on-spot by the Canadian authorities showed significant discrepancies on a monthly basis. According to the Canadian statistics, imports of US biodiesel increased from 11 757 tonnes in 2008 to 18 673 tonnes in 2009 and 174 574 tonnes during the IP.

- (29) According to the Canadian authorities, there is no specific code to declare biodiesel. They noted that Canada and the USA exchange import data for use as their respective export data. As such, at the six-digit level Canadian import data and US export data should match, which they do quite closely under HTS 3824.90. However, beyond six digits they each have their own classification systems. Also it should be noted that the Canadian statistics only cover imports which have been customs cleared in Canada and not transhipped goods.

- (30) In conclusion, despite the discrepancies between the two data sources, it is clear that US export of biodiesel to Canada increased from 2008 to the IP, and in particular following the imposition of anti-dumping measures. The Canadian biodiesel market is currently not able to absorb such quantities of biodiesel. Genuine Canadian biodiesel producers are in fact export oriented.

4.2.3. Production in Canada and sales of genuine Canadian biodiesel to the Union

- (31) The two cooperating producers in Canada did not purchase any biodiesel from the USA or from any other sources during the IP.
- (32) Production of biodiesel in Canada is an infant industry. Some six production facilities were in place during the IP, but the two facilities in eastern Canada, which are in fact owned and run by the two cooperating producers, alone account for approximately 90 % of total production.

(33) From the production volumes sold by the cooperating producers, sales where end-customers were certainly in North America, i.e. in the USA or Canada, were determined. The remainder of the sales were sold to customers who either traded the goods and/or blended the goods with other biodiesel. The two companies did not know whether the customers sold the products to the Union as Canadian biodiesel, whether they blended it, or whether the biodiesel was sold to end-customers in the USA or in Canada.

(34) Even if in an extreme case it was assumed that all genuine Canadian biodiesel ended up in the Union, this would account for only 20 % of total imports into the Union from Canada during the IP.

4.3. Conclusion on the change in the pattern of trade

(35) The reconciliation of statistics with the data obtained from the cooperating producers showed that Canadian biodiesel producers could not have produced the volume exported from Canada into the Union. This therefore strongly suggests that the surge of imports from Canada to the Union market relates to exports of US biodiesel consigned from Canada.

(36) The overall decrease of US exports to the Union as from 2008 and the parallel increase of exports from Canada to the Union and of exports from the USA to Canada after the imposition of the original measures can thus be considered as a change in the pattern of trade.

4.4. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty

(37) The investigation did not bring to light any other due cause or economic justification for the transshipment than the avoidance of the payment of the anti-dumping duty in force on biodiesel originating in the USA.

4.5. Undermining the remedial effect of the anti-dumping duty

(38) Eurostat data was used to assess whether the imported products had, in terms of quantities, undermined the remedial effects of the anti-dumping measures in force on imports of biodiesel from the USA. The quantities and prices of exports from Canada were compared with the injury elimination level established in the original investigation.

(39) As mentioned above, imports from Canada into the Union increased from 1 725 tonnes in 2008 to 197 772 tonnes during the IP, the latter representing a share of imports of 9,2 %. The increase of imports from Canada could not be considered to be insignificant

bearing in mind the size of the Union market as determined in the original investigation. Considering the non-injurious price level established in the original investigation, Canadian imports into the Union during the IP showed underselling in the region of 50 %, while undercutting the Union producers' sales prices by approximately 40 %.

(40) It was therefore concluded that the measures are being undermined in terms of quantities and prices.

4.6. Evidence of dumping

(41) In accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value established in the original investigation.

(42) In the original investigation normal value was established on the basis of domestic sales prices in the ordinary course of trade and constructed based on the cost of production plus a reasonable profit margin where there were no domestic sales or where they were not in the ordinary course of trade.

(43) Export prices from Canada were established on the basis of the average import price of biodiesel during the IP as reported in Eurostat.

(44) For the purpose of a fair comparison between the normal value and export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, in the absence of information relating to a number of costs items, only transport costs and insurance based on the observed average costs for ocean freight of biodiesel from the USA to the Union during the original investigation period, were deducted from the Eurostat CIF prices in order to arrive at the FOB prices at the Canadian border.

(45) In accordance with Article 2(11) and (12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original investigation and the weighed average export prices during the IP, expressed as a percentage of the CIF price at the Union frontier duty unpaid.

(46) This comparison showed the existence of dumping.

4.7. Conclusion

(47) The investigation concluded that the definitive anti-dumping duties imposed on imports of biodiesel originating in the USA were circumvented by transshipment via Canada pursuant to Article 13 of the basic Regulation.

5. SINGAPORE

- (48) Two traders located in Singapore cooperated with the investigation. In addition, cooperation was received from the relevant authorities of the Government of Singapore.
- (49) The criteria for the assessment of the existence of circumvention have been described in recital 23 above.
- (50) According to Eurostat figures total exports of biodiesel from Singapore to the Union increased from 179 tonnes in 2008 to 20 486 tonnes in 2009 and to 32 078 tonnes during the IP. Exports from the USA to Singapore have also increased over the same period.
- (51) According to the relevant authorities of the Government of Singapore the biodiesel produced locally is sold mostly within Singapore to cater to domestic demand. However, they do note a growing industry in Singapore with the recent construction of new production facilities.
- (52) Exports from Singapore have traditionally been low. Imports of biodiesel into the Union were closely examined in the Article 14(6) database and checked with the relevant national customs authorities. It appears that imports have arrived in a few spikes. The analysis showed that the majority of these imports were of genuine Singaporean origin. However, not all imports could be accounted for.
- (53) Compared to the Union consumption established in the original investigation the import volumes from Singapore to the Union, which could not be accounted for, were found to be extremely low. Furthermore, their share of Union consumption, taking account of EBB's estimation of the considerable increase in Union consumption since the original investigation, would be negligible.
- (54) In view of the above, it can be concluded that the remedial effects of the anti-dumping measures have not been undermined in terms of quantities consigned from Singapore.
- (55) Regarding transshipment, it is well known that Singapore is a huge shipping hub in Asia where regional ships arrive and unload goods which are later reloaded to ships sailing, among others, to Europe. In this investigation, one of the cooperating traders transhipped biodiesel with Malaysian or Indonesian origin through Singapore with a final destination in the Union. During the IP, this trader alone exported a significant quantity of biodiesel to the Union via transshipment in Singapore and customs cleared the biodiesel in the Union as Malaysian or Indonesian origin. The verification did not reveal indications to put in question the declared Indonesian or Malaysian origin.
- (56) In the light of the above, the investigation concerning the possible circumvention of anti-dumping measures by imports of biodiesel consigned from Singapore should be terminated.

6. USA

6.1. Preliminary remarks

- (57) Five US producers of biodiesel or biodiesel blends cooperated in the investigation, three of which were included in the sample of the original investigation. The US Government cooperated by providing exports statistics and their interpretation of the statistics.
- (58) All three producers which were included in the sample in the original investigation had stopped exporting biodiesel after the imposition of definitive measures.
- (59) Only one of the five cooperating companies, BP North America which did not cooperate in the original investigation, exported biodiesel blends containing by weight 20 % or less of biodiesel (B20 and below) to the Union during the IP.
- (60) The National Biodiesel Board (NBB) which represents the US biodiesel industry argued that a product which was according to them explicitly found to be outside of the product scope of the existing measures cannot become subject to anti-dumping measures without a *de novo* anti-dumping investigation. NBB argued that the definitive Regulation in explicit terms established the 'product concerned' and 'like product' at the level of biodiesel or biodiesel in blends with biodiesel representing more than 20 %. According to NBB, this was not an artificial threshold but corresponded to the market reality found during the original investigation. It was, for example, found that the threshold of 20 % was appropriate to allow a clear distinction between the various types of blends which were available on the US market.
- (61) In the view of NBB and other interested parties, an anti-circumvention investigation can only extend anti-dumping measures on a product concerned to a like product that is only a slightly modified product compared to the product concerned. Again, NBB argued that the Council itself, in the definitive Regulation, had established that biodiesel in blends with a volume of biodiesel of 20 % or less is not a like product. Therefore, according to NBB, in the structure of the provisions of the basic Regulation there is no other option but to initiate a new investigation in order to determine whether these blends should become subject to measures.
- (62) In reply to these arguments, it should first of all be noted that the purpose of the anti-circumvention provisions in Article 13 of the basic Regulation is to counteract any alleged attempts to evade the measures in force. If sufficient *prima facie* evidence exists showing that circumvention is taking place within the meaning of Article 13(1) of the basic Regulation, the Commission will initiate an investigation in order to determine whether circumvention takes place. In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention should be made, for example, by analysing successively whether there was a

change in the pattern of trade between USA 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 and 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.

(63) It should also be recalled that an anti-circumvention investigation is not a review of the product scope based on Article 11(3) of the basic Regulation and does not change the definition of the product concerned and the like product. The provisions under Article 13 of the basic Regulation provide for the relevant legal basis for an investigation of whether there is circumvention with regard to a product subject to measures.

(64) In this respect, the request the Commission received pursuant to Article 13(3) of the basic Regulation alleged that, following the imposition of the measures, exports of biodiesel in blends containing 20 % or less 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 and the like product. The investigation examined whether such practice could be considered as circumvention pursuant to the provisions of Article 13 of the basic Regulation. Finally, it should be noted that alleged circumvention practices can only be examined under Article 13 of the basic Regulation.

6.2. Exports of B20 and below from the USA to the Union

(65) As mentioned above in recital 20, the US HTS code 3824.90.40.00 contains also blends with a biodiesel content of 96,5 % and below. According to the US export statistics a total quantity of 358 291 tonnes of this type of blend was exported to the Union during the IP.

(66) BP Products North America (BPNA) during the IP exported a significant proportion of the abovementioned quantity.

(67) BPNA did not participate in the original investigation because it started up its biodiesel activities only in the beginning of 2009 in anticipation of a growing biodiesel market in the future, in response to government mandates both in the USA and abroad. BPNA started to export to the Union in December 2009. In this respect it is recalled that definitive measures were imposed in July 2009.

(68) In the Union, BP sold US origin biodiesel blend containing by weight 15 % or less of biodiesel (B15) in the UK, France and the Netherlands. In all cases, the product is further blended in order to respect the relevant legislation in force in certain Member States to promote the consumption of biofuels at the pump because they are currently considered environmentally sustainable.

(69) BPNA argued that blends less than 15 % are not a like product for the product concerned. The characteristics and market realities are very different. The logistics involved (including shipping restrictions) in the production and importing of lower blends are very different to those of higher grades. According to BPNA, when transporting blends less than 15 %, such products are classified as a petroleum product for shipping as opposed to a chemical product which makes the shipment less costly. BPNA also argued that there are differences in performance between higher and lower grade biodiesel blends when used in diesel engines.

(70) The objective of a circumvention investigation is to establish whether biodiesel in a blend containing by weight 20 % and less of biodiesel has circumvented the measures in force. It may well be the case that lower blends attract lower shipping costs. However, it should be noted that a blend of B20 and below is effectively only a different composition of the blend, in comparison to the process of producing biodiesel in a blend above B20. It is a simple process to change the composition of a blend. Putting into existence B20 and below is considered to be merely a slight modification of the product concerned, the only difference being the biodiesel proportion in the blend. It should also be noted that the product concerned, as well as B20 and below, ultimately are destined for the same uses in the Union. Furthermore, biodiesel in blends of B20 and below as well as biodiesel in blends above B20 have the same essential characteristics.

6.3. Change in patterns of trade

(71) Imports of the product concerned 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.

(72) In this regard, it should be noted that though there was mandatory blending of, for example, B5 in the Union during the original investigation, exports of B20 or below from the USA to the Union only came into existence following the imposition of definitive measures. During the original investigation, mainly exports of B99,9 were exported to the Union according

to the data obtained from the sampled cooperating exporting producers. The reason for this was that it maximised the subsidy on the exported goods (USD 1 biodiesel tax credit per gallon).

(73) It is therefore difficult to see what the economic justification would be for starting to export B20 and below other than the avoidance of the anti-dumping measures in place.

(74) The proportion of biodiesel in the blend is still subsidised and the importer avoids the payment of the anti-dumping duty due. In this respect, it should be noted that the anti-dumping duty on blends is applicable in proportion to the biodiesel in the blend, i.e. in the case of imports of B15 the anti-dumping duty not paid would be up to around EUR 26 per tonne.

6.4. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty

(75) According to BNPA, the creation of less than B15 biodiesel was not created specifically to avoid duties. The company argued that it did not participate in the original investigation because it started up its biodiesel activities beginning of 2009 in anticipation of a future active biodiesel market in response to government mandates, both in the USA and abroad. The specific structure of the company, its activity as a petroleum company and its logistic presence in the USA, made blending in the USA and exporting to the Union a logical commercial decision. The blend exported was always B15 or below, because of the less stringent security measures: up to B15 the blend is not considered a chemical product according to maritime regulations.

(76) It is noted that this company's activity in regard to exports to the Union only started after the imposition of measures. It is considered that there is insufficient due cause or economic justification other than the avoidance of the payment of the anti-dumping duty in force on biodiesel originating in the USA.

6.5. Undermining the remedial effect of the anti-dumping duty

(77) Considering the non-injurious price level of the original investigation, US imports of B20 and below into the Union during the IP showed both undercutting and underselling. The imports of B20 and below only came into existence following the imposition of definitive measures and the quantities involved are not insignificant.

(78) It was therefore concluded that the measures are being undermined in terms of quantities and prices.

6.6. Evidence of dumping

(79) In accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value established in the original investigation. The comparison of the weighted average normal value and the weighted average export price showed the existence of dumping.

6.7. Conclusion

(80) The investigation concluded that the definitive anti-dumping duties imposed on imports of biodiesel originating in the USA were circumvented by imports into the Union of biodiesel in a blend containing by weight 20 % or less of biodiesel.

(81) It was concluded that the only economic justification for exporting blends of B20 and below was prompted by the subsidisation in the USA on the one hand, and the avoidance of paying any anti-dumping duties when importing into the Union on the other hand.

(82) BPNA requested an exemption from the possible extended measures. However, as the investigation clearly showed that imports of B20 and below were only done in order to circumvent the measures in force, such exemption cannot be granted. Pursuant to the provisions of Article 13(4) of the basic Regulation, exemptions may be granted to producers of the product concerned who can show that they are not related to any producer subject to measures and that they are found not to be engaged in circumvention practices. In these investigations, it was found that BPNA is involved in the circumvention practices by starting to export B20 and below after the imposition of anti-dumping and countervailing measures without sufficient due course or economic justification other than the imposition of the measures. Moreover, there is evidence that the effects of the measures are being undermined in terms of prices and quantities, and that dumping in relation to the normal values previously established exists.

(83) Some biodiesel producers cooperating in the original investigations requested exemptions from any extended measures due to circumvention. It was found that these US producers did not produce or sell biodiesel B20 and below. Pursuant to Article 13(4) of the basic Regulation,

only producers' request for exemption can be considered in the course of an anti-circumvention investigation. However, it should be noted that Article 13 of the basic Regulation contains newcomer provisions.

7. MEASURES

7.1. Canada

(84) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of biodiesel originating in the USA was circumvented by transshipment via Canada pursuant to Article 13 of the basic Regulation.

(85) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the USA, should therefore be extended to imports of the same product consigned from Canada, whether declared as originating in Canada or not.

(86) In order to avoid evasion of the duty by unverifiable allegations that the product transhipped through Canada has been produced by a company subject to an individual duty in the definitive Regulation, the measure to be extended should be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 599/2009, which is a definitive anti-dumping duty of EUR 172,2 per tonne.

(87) The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

(88) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiation Regulation, duties should be collected on those registered imports of biodiesel consigned from Canada.

7.2. USA

(89) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of biodiesel originating in the USA was circumvented by imports into the Union of B20 and below pursuant to Article 13 of the basic Regulation.

(90) In accordance with the first sentence of Article 13(1) of the basic Regulation, the measures in force on imports of the product concerned originating in the USA, should therefore be extended to imports of B20 and below.

(91) The measures to be extended shall be those established in Article 1(2) of Regulation (EC) No 599/2009.

(92) The extended anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the

total content of fatty-acid mono alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

(93) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiation Regulation, duties should be collected on those registered imports of B20 and below originating in the USA.

8. TERMINATION OF THE INVESTIGATION AGAINST SINGAPORE

(94) In view of the findings regarding Singapore, the investigation concerning the possible circumvention of anti-dumping measures by imports of biodiesel consigned from Singapore should be terminated and the registration of imports of biodiesel consigned from Singapore, introduced by the initiation Regulation, should be discontinued.

9. REQUEST FOR EXEMPTION

(95) The two cooperating companies in Canada submitting a questionnaire reply requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.

(96) It was found that the two cooperating Canadian producers were not engaged in the circumvention practices which are the subject of this investigation. Furthermore, these producers could demonstrate that they are not related to any of US producers/exporters of biodiesel. Therefore, their requests for exemption can be granted.

(97) It is considered that special measures are needed in this case in order to ensure the proper application of such exemptions. These special measures consist in the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the extended anti-dumping duty.

(98) One cooperating party in the USA submitting a questionnaire reply requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation.

(99) As explained in recital 82 above, the investigation clearly showed this party was engaged in the circumvention practices by importing B20 and below. Consequently, such exemption cannot be granted.

(100) However, it should be underlined that, should any exporting producer(s) concerned not be dumping anymore, such parties can request a review pursuant to Article 11(3) of the basic Regulation.

10. DISCLOSURE

- (101) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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, originating in the United States of America, is hereby extended to imports into the Union 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, consigned from Canada, whether declared as originating in Canada or not, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 41 (TARIC code 2710 19 41 21), ex 3824 90 91 (TARIC code 3824 90 91 10) and ex 3824 90 97 (TARIC code 3824 90 97 01), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 599/2009, which is a definitive anti-dumping duty of EUR 172,2 per tonne net.

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of exemptions granted to the companies mentioned in paragraph 1 or authorised by the Commission in accordance with Article 4(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the

requirements set out in the Annex. If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 shall apply.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Canada, whether declared as originating in Canada or not, registered in accordance with Article 2 of Regulation (EU) No 720/2010 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, with the exception of those produced by the companies mentioned in paragraph 1.

4. The provisions in force concerning customs duties shall apply.

Article 2

1. The definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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, originating in the United States of America, is hereby extended to imports into the Union 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, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 41 (TARIC code 2710 19 41 30) and ex 3824 90 97 (TARIC code 3824 90 97 04).

The duties to be extended shall be those established in Article 1(2) of Regulation (EC) No 599/2009.

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The duty extended by paragraph 1 of this Article shall be collected on imports originating in the United States of America, registered in accordance with Article 2 of Regulation (EU) No 720/2010 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

3. The provisions in force concerning customs duties shall apply.

Article 3

The investigation initiated by Regulation (EU) No 720/2010 concerning the possible circumvention of the anti-dumping measures imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Singapore, whether declared as originating in Singapore or not, and making such imports subject to registration, is hereby terminated.

Article 4

1. Requests for exemption from the duty extended by Article 1(1) and Article 2(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/92
1049 Brussels
BELGIUM
Fax + 32 2 295 65 05

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 599/2009, from the duty extended by Article 1(1) and by Article 2(1).

Article 5

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 720/2010.

Article 6

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 May 2011.

For the Council
The President
MARTONYI J.

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(2):

1. The name and the function of the official of the entity issuing the commercial invoice.
 2. The following declaration: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'
 3. Date and signature.
-

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1518**of 14 September 2015****imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) By Regulation (EC) No 599/2009 ⁽²⁾, the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198,0 per tonne 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 anti-dumping duty imposed by that regulation is hereafter referred to as 'the existing measures'.
- (2) By Implementing Regulation (EU) No 444/2011 ⁽³⁾, following an anti-circumvention investigation, the Council extended the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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 anti-dumping duty imposed by Regulation (EC) No 599/2009 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 imports from Argentina and Indonesia ⁽⁴⁾.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 26).

⁽³⁾ Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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 anti-dumping duty imposed by Regulation (EC) No 599/2009 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 (OJ L 122, 11.5.2011, p. 12).

⁽⁴⁾ Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ L 315, 26.11.2013, p. 2).

1.3. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽¹⁾ of the anti-dumping measures in force on the imports of biodiesel originating in the USA, the European Commission ('the Commission') received a request for review pursuant to Article 11(2) of the basic Regulation.
- (5) The request was lodged on 9 April 2014 by the European Biodiesel Board ('the applicant' or 'EBB') on behalf of 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 dumping 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 basic Regulation, that sufficient evidence exists to justify the initiation of an expiry review, the Commission announced on 10 July 2014, by a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation'), the initiation of an expiry review under Article 11(2) of the basic Regulation.
- (7) On the same day, the Commission initiated an expiry review of the countervailing measures in force on the imports of biodiesel originating in the USA. This is a parallel but distinct proceeding which is dealt with by means of a separate Regulation.

1.5. Review investigation period and period considered

- (8) The investigation of likelihood of continuation or recurrence of dumping and injury 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 continuation or recurrence of injury covered the period from 1 January 2011 to the end of the review investigation period ('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 17 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.

⁽¹⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 289, 4.10.2013, p. 12).

⁽²⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of biodiesel originating in the United States of America (OJ C 217, 10.7.2014, p. 14).

- (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 with sizeable production and sales volumes which were now not included. 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 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 analysed on a broader basis. The US Government refers to the WTO Appellate 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 (93) 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 would be 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 would be 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 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 17(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 not to respond to the questionnaire. The other two sampled exporting producers requested various extensions to the deadline, which were granted, but no full replies were submitted.
- (23) On 10 November 2014 the Commission sent a letter informing the three sampled companies about the intention to apply Article 18 of the basic Regulation and base the findings of the investigation on facts available. The USA authorities were also informed about this intention. 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 18 of the basic Regulation and, accordingly, that findings, affirmative or negative, may be made on the basis of the facts available.
- (26) The company Cargill Inc. noted that Regulation (EC) No 599/2009 had established a *de minimis* dumping margin and thus had imposed a 0 % definitive anti-dumping duty rate on US origin biodiesel produced and exported by them. They further noted that in line with the WTO Appellate Body findings in the report 'Mexico Rice' ⁽¹⁾ an exporting producer not found to be dumping in an original investigation cannot be made subject to the expiry review of the anti-dumping measures.
- (27) The company Cargill Inc. therefore requested to continue to be exempted from anti-dumping duties irrespective of the outcome of the expiry review. This request was accepted.

1.8. Questionnaire replies and verification visits

- (28) The Commission sent questionnaires to the sampled Union producers and to the unrelated importers, traders and users that had made themselves known within the time limits set out in the Notice of Initiation.
- (29) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

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 SA, Trzebinia, Poland,
- Verbio Vereinigte BioEnergie AG, Leipzig, Germany.

1.9. Disclosure

- (30) On 3 June 2015, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to maintain the anti-dumping measures in force and invited all interested parties to comment. The comments made by the interested parties were considered by the Commission and taken into account, where appropriate.

⁽¹⁾ Mexico — Definitive Anti-Dumping Measures on Beef and Rice, WT/DS 295/AB/R, 29 November 2005.

- (31) Following final disclosure NBB requested and was granted a hearing with the Hearing Officer in trade proceedings.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (32) The product under review is the same as in the investigation leading to the imposition of the existing measures ('the original investigation'), i.e. 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, originating in the USA, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 92, ex 3826 00 10 and ex 3826 00 90 ('the product under review').
- (33) Biodiesel is a renewable fuel used in the transport sector for diesel engines. However, conventional engines cannot function with pure biodiesel but a blend of mineral diesel and a limited content of biodiesel.
- (34) Biodiesel produced in the USA is predominantly 'fatty acid methyl ester' (FAME) derived from a wide range of vegetable oils (soybean oil, palm oil, rapeseed oil) and used frying oils, animal fats or biomass, which serve as a biodiesel feedstock. The term 'ester' refers to the trans-esterification of vegetable oils, namely, the mingling of the oil with alcohol. The term 'methyl' refers to methanol; the most commonly used alcohol in the process, although ethanol can also be used in the production process, resulting in 'fatty acid ethyl esters'.
- (35) All types of biodiesel and the biodiesel in the blends, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product under investigation do not alter its basic definition, its characteristics or the perception that various parties have of it. In particular, from the perspective of the end-user of diesel fuel, it makes no difference if the blend available at the pump is made of one particular biodiesel feedstock.

2.2. Like product

- (36) As in the original investigation, the biodiesel sold on the domestic market in the USA and the US biodiesel sold for export have the same basic physical and technical characteristics and uses. Similarly, the biodiesel produced and sold in the Union by the Union industry has the same basic physical and technical characteristics and uses as the product exported from the USA to the Union. Therefore, they are like products for the purposes of the present investigation within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (37) The US Government (USG) claimed that diesel produced from biomass ⁽¹⁾ is a category of products broader than the product under review. However, as set out in the Regulation imposing provisional countervailing duties in the original investigation ⁽²⁾, all types of biodiesel and biodiesel blends, including diesel produced from biomass, are considered to be biodiesel fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels. The reason is that biodiesel produced from biomass has the same or very similar basic physical and technical characteristics and uses as biodiesel produced from other sources. The finding in the original investigation was not challenged by any interested party and remains valid in this expiry review. Consequently, the Commission rejects this claim by the USG.

⁽¹⁾ Under US legislation, 26 US Code, Section 45K(c)(3), the term 'biomass' means any organic material other than: (A) oil and natural gas (or any product thereof); and (B) coal (including lignite) or any product thereof.

⁽²⁾ Commission Regulation (EC) No 194/2009 of 11 March 2009 imposing provisional countervailing duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 50), recital 20.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

- (38) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

3.1. Preliminary remarks

- (39) Due to lack of cooperation from the selected sampled producers mentioned in recital (25) above, it was not possible to carry out an analysis based on verified data supplied by US producers. The Commission therefore made use of the following sources of information: the data provided by some US biodiesel producers at initiation stage in reply to the questionnaires for the purpose of the sampling, Eurostat, the request for an expiry review, subsequent submissions from the applicant, the US National Biodiesel Board, the websites of the US Energy Information Administration and the US Department of Energy, and the US International Trade Commission.

3.2. Dumping of imports during the RIP

- (40) Following the imposition of measures in 2009, imports of biodiesel from the USA to the Union dropped to almost zero, with only a very small quantity exported in 2013 and during the RIP. In these circumstances, it was not considered relevant to assess the level of dumping in the RIP. It can therefore be concluded that there was no continuation of dumping during the RIP.

3.3. Evidence of likelihood of recurrence of dumping

- (41) The Commission analysed whether there was evidence of likelihood of recurrence of dumping should the measure lapse. In particular, the following elements were analysed: the relationship between prices of the product produced and sold in the Union and in the USA, the relationship between export prices to third countries and prices in the USA, the relationship between export prices to third countries and the price level in the Union, the unused capacities and circumvention and absorption practices.

3.3.1. Relationship between prices of the product produced and sold in the Union and in the USA

- (42) In the absence of cooperation from the US biodiesel producers, the Commission services made use of three sources of information for establishing the domestic sales price of biodiesel in the US during the RIP: (i) the replies to the questionnaire sent out at initiation stage for the purpose of sampling, submitted by a number of US biodiesel producers at initiation stage; (ii) information provided by the NBB based on information gathered by a market surveyor named 'Jacobsen'; and (iii) information provided by the applicant based on information gathered by the Oil Price Information Service (OPIS).
- (43) The data from these three sources include different levels of trade prices and incoterm conditions. However, the values are very close to each other. The average of the values from these three sources is USD 1 196,93 per metric tonne. At the euro/dollar average exchange rate during the RIP (1 EUR = 1,356 USD), this amount corresponds to a US domestic sales price of EUR 883 per metric tonne⁽¹⁾.
- (44) The average ex-works price of biodiesel sold in the Union by Union producers during the RIP, as shown in Table 8 below, was EUR 905 per metric tonne (USD 1 227,18).
- (45) In order to re-enter the Union market, the US producers would need to sell at a lower price than EUR 905 per metric tonne. Their final price should also cover the ocean freight and insurance costs and the existing customs duty (6,5 %) applicable to biodiesel. According to data obtained during the investigation, this would amount to approximately EUR 100 per metric tonne. The Commission based this amount on the amount for customs duties, transport and freight, as calculated by the NBB (around EUR 94) and rounded it up to EUR 100 to cover also some additional post-importation expenses.

⁽¹⁾ Due to a typographical error, the Disclosure Document indicated incorrectly an amount of EUR 884.

- (46) As a consequence, should the US producers resume exports to the EU, they would need to do so at an ex-works price (less than EUR 805 per metric tonne) which would be lower than their domestic sales price in the US, thus at a dumped price. On the basis of the circumstances described in more detail in recitals (63) and (71) concerning respectively the export prices to third countries and the spare capacity, it is likely that the US producers would resume exports to the Union if the measures in force were allowed to lapse, as this would allow them reducing the unit costs of production, as explained in more detail in recital (72) below.
- (47) Following final disclosure, the NBB questioned the accuracy of the average domestic sales price established by the Commission and reminded that in one of its earlier submissions a lower value (EUR 789,36 per metric tonne) was indicated, based on the prices made available by the US Department of Energy.
- (48) The Commission rejects this claim for the following reasons:
- (49) As regards the average price indicated by the NBB, it cannot be regarded as an accurate basis, because it was a retail price and not an ex-factory price. More specifically, the NBB provided an average monthly retail price (at the pump) for biodiesel in the USA in July 2014, measured in gasoline gallons equivalent (GGE) and using the exchange rate of only one point in time, i.e. 19 September 2014.
- (50) As regards the average price calculated by the Commission, it is a reasonable value taking into account that it was calculated making use of the best fact available in the absence of cooperation from the US producers. It is an average of the prices declared by some US producers at initiation stage, the prices collected by the surveyor 'Jacobsen' as provided by the NBB itself and the prices collected by OPIS as provided by the EBB. It was a simple average in the absence of information on quantities which would allow calculating a weighted average. The three values were very similar though. The incoterm conditions and level of trade were not known and could not be taken into account. However, the OPIS prices were adjusted to take into account reasonable transport costs within the USA. In the light of the significant difference between domestic and export price, any adjustment for incoterm conditions and level of trade would have not changed the conclusion that if US producers want to resume sales to the Union, they would have to sell at dumped prices.
- (51) The NBB also challenged the amount of EUR 100 per metric tonne used to calculate a reliable average export price starting from the average Union price of biodiesel and suggested using EUR 110,49 instead. As mentioned in recital (45) above, the Commission used the amounts suggested by the NBB for customs duties, transport and freight. The Commission only used a lower amount for the additional post importation costs than the EUR 16,69 as claimed by the NBB, because the NBB did not demonstrate that the amount for post importation should be 2 % of the CIF frontier value. In any event, the difference between the Commission's estimation and the one from the NBB is marginal and does not change the conclusion on the likelihood of dumping, also taking into account that no precise dumping calculations were required in this respect.
- (52) The NBB claimed that, like in the original investigation, an adjustment for physical difference should have been granted to take into account that the main feedstock used to produce biodiesel in the US is soya beans whereas in the Union the main feedstock used is rapeseed which has a higher quality and demands a price premium.
- (53) This claim must be rejected. In the original investigation the adjustment was granted on the basis of a comparison of verified data from US producers and Union producers. In the absence of cooperation from the US producers in the present expiry review, the Commission could firstly not establish that an adjustment should be granted. Secondly if any adjustment were to be granted, the Commission could not establish the level of such an adjustment. The circumstances prevailing at the time of the original investigation have changed, in particular the mix of the feedstock used both in the EU and in the USA to produce biodiesel is no longer the same. Also, the NBB claimed an adjustment of 10 %, but has not substantiated this level of the adjustment.
- (54) The NBB and the US Government claimed that since the US domestic price is higher than the likely export price to the Union, US producers would increase their domestic sales rather than exporting to the Union, in particular in view of the increased consumption in the US.

- (55) This claim is unfounded and should be rejected. The consumption in the USA increased in the past years, mainly due to Government policies such as incentives and mandatory targets set out in the Renewable Fuels Programme and subsidy schemes to promote the production and blending of biodiesel. However, based on the data provided by the NBB itself, the biodiesel consumption in the USA in 2014 decreased compared to 2013. There is no evidence that consumption will increase in 2015 and 2016. On the contrary, publicly available information ⁽¹⁾ suggests that the targets for mandatory use of renewable fuels in the USA will remain stable in the years to come. As a consequence, the current consumption level in the USA is more likely to remain stable than to increase. As there is an excess capacity in the USA (see recitals (69) and following below), US producers would still have an incentive to export to the Union even if they sell at a lower price than the domestic price but still cover their variable costs.
- (56) The NBB claimed that the Commission should have explained how an increased production volume would decrease the costs of production of the US producers. In this respect, it should from the outset be stated that due to the lack of cooperation, the Commission could not make a precise calculation regarding the impact of higher production volumes on the costs of US producers. However, it is clear from an economic point of view that if fixed costs are apportioned to a larger production volume, the unit cost of production decreases. This holds true even if in the production of biodiesel the main part of the costs are variable and depend on the raw materials used, as alleged by NBB. The fixed costs still need to be allocated to the total production volume. Indeed, information obtained from the Union industry showed that the cost of feedstock is a major part of the cost of production, but the exact percentage depends on the feedstock used, to what extent a company is vertically integrated and the SG&A cost of a company. In these circumstances, the Commission could reasonably assume that an increased production would decrease the cost of production of the US producers. This would only be different in case the export price would be so low that it would not even cover the price of feedstock used, but the NBB did not provide any comments that would support such scenario.

3.3.2. Relationship between export prices to third countries and prices in the USA

- (57) Another element that justifies the conclusion that dumping is likely to recur is based on the analysis of the pattern of US biodiesel exports to third countries during the RIP. The Commission consulted the database of the United States International Trade Commission and extracted the quantities and values of the export of biodiesel under the HTS code 382600 for the RIP. The export quantities (in metric tonnes) to all countries (EU included) amount to 567 018 tonnes. The average value per metric tonne during the RIP was 753,34 EUR free alongside ship. The Commission calculated an average sales price in US dollars per metric tonne and compared it with the average domestic price in the USA (established as explained in recital (42) above). The findings are summarised below:

Table 1

US export volumes and export prices during the RIP

Countries of destination	Export quantities (in metric tonnes)	Percentage of exports to all countries	Average value (USD) per metric tonne	Average value (EUR) per metric tonne	Dumping as a percentage of the export price
Total Gibraltar ⁽¹⁾	76 266	13	753,19	555,45	59
Total Canada	247 959	44	1 167,33	860,86	3
Total Australia	4 267	1	1 019,77	752,04	17
Total Malaysia	103 773	18	891,44	657,41	34

⁽¹⁾ Gibraltar is not part of the Customs Unions and imports of products into Gibraltar are not considered as release of products in free circulation in the Union.

⁽¹⁾ See for example: <http://biodiesel.org/news/news-display/2014/05/14/biodiesel-producers-hit-hard-by-policy-uncertainty>, accessed on 6 July 2015.

- (58) The table shows that US producers appear to be currently selling to third countries at dumped prices, with export prices lower than domestic prices in the range from 3 % to 59 %. Therefore the Commission concluded that since US producers are currently selling to third countries at dumped prices, it is likely that they would export to the EU, by diverting some of their current exports to other markets, also at dumped prices.
- (59) Following final disclosure, the NBB questioned the accuracy of export data as the HTS code used for assessing the volume of exports (38 26 00) includes other products and therefore the export price cannot be compared to the domestic price of biodiesel.
- (60) The Commission used this code because the US Government itself stated in its second supplementary questionnaire response dated 19 December 2014 that that code had been used from 2012 onwards in order to provide accurate statistical information on exports of US biodiesel. Although this code overstates the value of the product concerned exported, it does so to a far lesser degree than the codes used in the past. The US authorities concluded that that code provided a relatively accurate representation of the export value.
- (61) The NBB claimed that the domestic prices calculated by the Commission cannot be compared with the export prices indicated in the ITC database and accordingly the dumping margins calculated by the Commission cannot be used.
- (62) In an expiry review, no new dumping margins need to be calculated. In the present case, following the imposition of measures, dumped exports came to a halt, so the analysis focused on the likelihood that dumped exports will resume. In the absence of cooperation from US producers, the Commission made use of facts available. In this scenario, the export prices to third countries are relevant and can be used as an indicator to assess what will happen once measures lapse. More specifically, the comparison between domestic prices and export prices to third countries does not aim to calculate exact dumping margins but give an indication of the likelihood of recurrence of dumping should existing measures be allowed to lapse.

3.3.3. Relationship between export prices to third countries and the price level in the Union

- (63) The EU market is an attractive market of US exports of biodiesel. Based on the database of the United States International Trade Commission referred to in recital (57) above, during the RIP the average export price to all destinations was USD 1 021,52 (EUR 753,34) per metric tonne. The highest average export price was to Canada (USD 1 167,33 or EUR 860,86 per metric tonne) and the lowest average export price was to Gibraltar (USD 753,19 or EUR 555,45 per metric tonne).
- (64) This average export price is lower than the average price of biodiesel sold in the Union by Union producers during the RIP (EUR 905 per metric tonne). Even if US producers would have to sell at a price below EUR 905 per tonne to penetrate the Union market, they would still have an incentive to redirect some of the current exports to third countries towards the Union market, as it is more attractive than some other third countries' markets.
- (65) The NBB and the US Government claimed that the current US export sales to third countries would not be diverted to the Union because the single largest export market is Canada where prices are higher than the ex-works price to the Union.
- (66) The Commission referred however to 'some of the current export sales' and not all of them. The Commission did not claim that US producers would stop exporting to Canada and re-route those sales to the Union. Indeed, Canada could also be regarded as an attractive market for US producers, however it has a limited size compared to the Union market ⁽¹⁾, which remains the biggest biodiesel market in the world.
- (67) The NBB claimed also that current exports to Malaysia would not be diverted to the Union because consumption is growing there and there are no customs duties to be paid on imports of biodiesel.

⁽¹⁾ Consumption of biodiesel in Canada is to reach slightly above 300 000 tonnes in 2015. See example: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Ottawa_Canada_11-24-2014.pdf, accessed on 6 July 2015.

- (68) However, based on the US average exports prices to Malaysia as they appear in the ITC database, it appears that selling to the Union would be more profitable for the US producers than selling to Malaysia, even if adding up ordinary customs duties. As shown in Table 1 above, during the RIP export prices to Malaysia were significantly lower than prices in the Union. Also, consumption in Malaysia might be growing, but so might production in Malaysia, which is in particular based on palm oil. In addition, it can reasonably be expected that the neighbouring country of Indonesia, which has a significant biodiesel production, will increase export to Malaysia in case consumption will grow. Therefore this claim should be rejected.

3.3.4. *Unused capacities*

- (69) The significant spare capacity of the US producers presents an incentive to increase production and sell biodiesel at dumped prices to the EU market. Due to the lack of US producers' cooperation, the Commission established the US production capacity on the basis of the available information on the websites of the US Environmental Protection Agency (EPA) and of the US Energy Information Administration (EIA).
- (70) US biodiesel producers must report to these two authorities (respectively on a yearly and a monthly basis) their existing and planned production capacity, as well as their production, input, stocks and sales of biodiesel.
- (71) On the basis of EIA's data, the US biodiesel producers' capacity during the RIP was 7 128 000 tonnes. This volume is very close to the volume provided by the NBB based on the information submitted by its members to the EPA, that is 6 963 000 tonnes.
- (72) The US actual production of biodiesel during the RIP was 4 450 000 tonnes (EIA's data), which corresponds to a capacity utilisation of 62,4 % and a spare capacity of 37,6 %, that is 2 678 000 tonnes. This spare capacity is likely to be used to supply the Union market should measures be allowed to lapse. Indeed, the US producers can easily increase their production and export it to the EU with the economic benefit of the increase in capacity utilisation ratio and reduction of unit cost of production. The release in the Union market of the US spare capacity would have a significant impact as it amounts to nearly 22 % of the Union consumption during the RIP.
- (73) In this respect, the NBB submitted a number of comments. First, the NBB pointed out that the US real production capacity would be lower than that considered by the Commission. Indeed, according to the NBB, a number of plants in the US, albeit registered, are actually inactive and therefore the real production capacity is 5 409 000 tonnes. The NBB also reported a higher production of biodiesel during the RIP, amounting to 5 084 000 tonnes. As a consequence, the NBB claimed that the capacity utilisation is around 94 % and that there is little spare capacity to be used to export to the EU if measures were repealed.
- (74) This claim was rejected. The data provided by the NBB could not be reconciled with officially available data. Biodiesel producers in the USA are obliged to submit to EIA on a monthly basis a form (EIA-22M 'Monthly Biodiesel Production Survey') indicating, among other data, the annual production capacity and their operating statuses, such as active, temporarily inactive or permanently ceased operations. Since January 2013, the registered capacity varied slightly from one month to another but was overall rather stable.
- (75) In addition, biodiesel producers in the USA are obliged to submit to EPA on an annual basis, among other information, the type, or types, of renewable fuel expected to be produced or imported and the existing and planned production capacity.
- (76) The registered capacity that US biodiesel producers have declared is thus updated regularly and is therefore considered as an accurate source. Even if the registered capacity is currently unused or idle, it must be taken into account for the calculation of the spare capacity which is available to increase production and exports.
- (77) Moreover, the production capacity values provided by the NBB already excluded the permanent shuttered capacity, as acknowledged in their submission. Plants which are not permanently shuttered can by definition start production again if future market conditions change (such as the opening up of the Union market). The 'likelihood-of-recurrence' test in an expiry review requires a forward looking approach about what could happen in the future if measures were allowed to lapse, and not a simple stock-taking of the situation during the RIP.

- (78) The Commission considers therefore that the current registered capacity constitutes an accurate basis for calculating the total US production capacity and spare capacity and rejects the NBB claim.
- (79) Following final disclosure, the NBB maintained that the production capacity should not take into account idle capacity even if this capacity was not notified to the US authorities as dismantled or permanently shuttered.
- (80) However, following the EIA instructions quoted by NBB, the '*annual production capacity [is] the quantity of biodiesel that a plant can produce in a calendar year, assuming normal downtime for maintenance. It includes the capacity of idle plant until the plant is dismantled or abandoned*'. It is evident from the above that EIA takes into account all possible plants which potentially can become active again. Consequently, contrary to what NBB argues, plants which are not dismantled or permanently shuttered can by definition start production again, if future conditions change.
- (81) The Commission considered therefore that the current registered capacity constituted an accurate basis for calculating the total US production capacity and spare capacity.
- (82) The NBB also claimed that the US biodiesel industry is not designed to operate as an exporting industry, as most US biodiesel facilities produce less than 15 000 000 gallons (55 000 metric tonnes) per year. Allegedly, it would not be economically feasible to stock several weeks of biodiesel of production for a single export shipment.
- (83) This claim was rejected as well. The US biodiesel industry can export and before imposition of the measures in force, the US producers were exporting significant quantities of biodiesel to the Union market, up to 1 137 000 tonnes during the investigation period of the initial investigation (1 April 2007 to 31 March 2008). This shows that there are US producers with sufficient production capacity to be able to export. The US producers without sufficient individual production capacity for a shipment to the Union will continue serving the domestic market and traders can put together the output of several plants and export it.
- (84) In conclusion, the US biodiesel industry has a significant spare capacity and has therefore a strong incentive to resume exports to the EU market should the existing measures be allowed to lapse.

3.3.5. Circumvention and absorption practices

- (85) As mentioned in recital (2), the anti-dumping measures imposed in 2009 were found to be circumvented by means of transshipments via Canada and by a change in the composition of the blend. The existence of such practices shows the interest of some US producers to enter the Union market, even after the imposition of measures, and is therefore considered as an indication of the likelihood of future dumping practices.
- (86) Following final disclosure, the NBB claimed that those events occurred four years before the RIP and cannot be used to draw any conclusion in the present case.
- (87) The Commission maintained that the existence of past practice put in place by the same market operators is not decisive as such, but could still be considered as an indication of the strong interest that US producers have in penetrating the Union market.

3.3.6. Other elements

- (88) In the RIP, the US production of biodiesel (4 450 000 tonnes) was lower than the consumption (4 896 000 tonnes). As a consequence, the USA was importing more biodiesel than it was exporting. The reason for that could be found in the uncertainty linked to the targets for mandatory biodiesel production under the Renewable Fuel Standard Programme (1,28 billion gallons, corresponding to 4 238 000 tonnes in 2014, unchanged compared to 2013) and the possibility for imported biodiesel to participate in the Renewable Fuel

Standard Programme and to claim the US biodiesel tax credit when it is in effect. During the RIP the total imports amounted to 1 072 000 tonnes, and the total exports to 567 000 tonnes. However, if the available production capacity was not used to satisfy the domestic demand during the period considered it is unlikely that such available production capacity would be used in the future for the same purpose. It has been established that in the RIP the US production capacity (7 128 000 tonnes) was significantly higher than the domestic consumption. This means that if export market opportunities open up, the US producers will have an incentive and are likely to use their spare capacity. If they could have used the spare capacity to satisfy the domestic consumption, they would have already done so.

- (89) In this context, it should be noted that the Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption. Thus, it would be convenient for US producers to utilise their spare capacity to the full extent and also to divert some of their export sales to other less profitable third countries into the Union market.
- (90) Following final disclosure, the NBB argued that the fact that during the RIP US consumption of biodiesel was higher than production shows that the US producers do not have spare capacity which could be used to penetrate the Union market, should measures be allowed to lapse.
- (91) The Commission considered that the established spare capacity in the USA, which could be used to satisfy the entire US consumption but at the moment it is not used for that purpose, would in all likelihood be used to satisfy other markets where demand exists and in particular the Union market where US exporting producers are currently not present. The Commission stressed that the production capacity is significantly higher than consumption in the USA and, accordingly, unused capacity is available for exports to the Union if the measures in force were allowed to lapse.

3.3.7. Conclusion on the likelihood of a recurrence of dumping

- (92) In light of the significant spare capacity of the US industry, combined with the attractiveness of the Union market in terms of size and sales price, in particular with regard to the price level of US exports to third countries, and the records of past circumvention practices, the Commission concluded that dumped imports from the USA are likely to recur if the measures in force were allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (93) The like product was manufactured by around 200 producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (94) The total Union production during the review investigation period was established at almost 11 600 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information provided in the complaint and data collected from Union producers during the investigation. As indicated in recitals (12)-(13) above, seven Union producers were selected in the sample representing almost 30 % of the total Union production of the like product.

4.2. Union consumption

- (95) The Commission established the Union consumption on the basis of the volume of the total Union production minus exports, plus imports from third countries. Import and export volumes were extracted from Eurostat data.

- (96) Union consumption developed as follows:

Table 2

Union consumption

	2011	2012	2013	RIP
Total Union consumption (metric tonnes)	11 130 119	11 856 626	11 382 324	12 324 479
<i>Index</i>	<i>100</i>	<i>107</i>	<i>102</i>	<i>111</i>

Source: Data from Union industry, Eurostat

- (97) Based on the above, the Union consumption of biodiesel increased by 11 % over the period considered.

4.3. Imports of the product under review from the country concerned*4.3.1. Volume and market share of the imports from the country concerned*

- (98) As mentioned above (recital (40)) imports of biodiesel from the USA to the Union have, according to Eurostat data, dropped to almost zero since the imposition of measures in 2009.
- (99) Imports into the Union from the country concerned and market share have developed as follows:

Table 3

Import volume and market share of the USA

	2011	2012	2013	RIP
USA (metric tonnes)	2 442	803	7	13
<i>Index</i>	<i>100</i>	<i>33</i>	<i>0</i>	<i>1</i>
Market share	0	0	0	0

Source: Eurostat

4.3.2. Prices and price undercutting

- (100) During the review investigation period the imports of biodiesel to the Union from the USA were negligible and could not provide a meaningful basis for calculating undercutting.
- (101) An analysis was therefore made between the average price of biodiesel produced and sold in the Union by the Union industry and the average export price of biodiesel to third countries from the USA in the review investigation period based on statistical data from the United States International Trade Commission. As mentioned above (recital (63)), the average export price to all countries was around EUR 753 per metric tonne FAS (free alongside ship). In order to calculate a likely and reasonable Union export price it would be necessary to add costs for transport and insurance as well a customs duty of 6,5 % and post-importation costs to this average export price, which are estimated to around EUR 100 per metric tonne (see recital (45)) above. It follows that an estimated export price to the Union would be undercutting the Union prices, which were EUR 905 during the review investigation period.

- (102) The NBB claimed that the Commission failed to explain why it used the average US export prices to third countries when establishing a likely Union export price rather than using the higher export price to Canada. It also contends that the Commission failed to explain the basis for the EUR 100 adjustment to the estimated export price to the Union and did not take into account post-importation costs as well as alleged price differences due to different feedstock. As a result the undercutting analysis would be flawed.
- (103) The investigation demonstrated, as described in recital (57) above, that US export prices vary significantly depending on destination. Therefore, in the absence of cooperation from US producers, in order to establish a reasonable and likely export price to the Union, the Commission established that price on the basis of an average to all export destinations. To simply use the highest export price, as claimed by NBB, would not have been an appropriate method in the same way as using the lowest export price would have been inappropriate. With regard to the components and source of the EUR 100 adjustment, including post-importation costs and price differences due to feedstock, the NBB put forward essentially identical claims with regard to the calculations relevant for dumping. For the reasons mentioned above in recitals (51) and (53) these claims are rejected also with respect to the undercutting analysis.

4.3.3. Imports from other third countries

- (104) The volume of imports from other third countries developed over the period considered as follows:

Table 4

Imports from third countries

	2011	2012	2013	RIP
Malaysia (metric tonnes)	16 622	36 543	211 430	314 494
Indonesia (metric tonnes)	1 087 517	1 133 946	394 578	204 086
Argentina (metric tonnes)	1 422 142	1 475 824	425 239	153 607
Others (metric tonnes)	139 580	153 529	177 889	206 592
Total (metric tonnes)	2 665 861	2 799 842	1 209 136	878 779
<i>Index</i>	100	105	45	33
Market share	24,0 %	23,6 %	10,6 %	7,1 %
<i>Index</i>	100	99	44	30
Average price EUR/tonne)	927	932	779	786
<i>Index</i>	100	100	84	85

Source: Eurostat

- (105) The volume of imports of biodiesel from third countries other than the USA has decreased significantly over the period considered which is reflected in a similar decrease in market share. The decrease in import volumes from 2013 coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina. The average price has also decreased by 15 % during the same period. The price trend is similar to

the trend for the Union industry prices on the Union market (Table 8 below) and can mainly be attributed to a decrease in feed stock prices. Albeit the price levels are approximately 13 % below the average Union price, the market share of these imports is low and does not have any significant impact on the Union industry.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (106) In accordance with Article 3(5) of the basic Regulation, an examination of all relevant economic indicators having a bearing on the state of the Union industry during the period considered was carried out.
- (107) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers and the microeconomic indicators on the basis of verified data from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (108) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (109) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (110) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2011	2012	2013	RIP
Production volume (metric tonnes)	8 547 884	9 138 558	10 528 886	11 596 824
<i>Index</i>	100	107	123	136
Production capacity (metric tonnes)	16 072 000	16 190 288	16 997 288	16 746 869
<i>Index</i>	100	101	106	104
Capacity utilisation	53 %	56 %	62 %	69 %
<i>Index</i>	100	106	116	130

Source: Data provided by EBB (the applicant)

- (111) Whilst the production capacity remained relatively stable during the period considered (+ 4 %), the production volumes increased significantly as from 2012 until the end of the review investigation period. This increase in production volumes is partly explained by the increase in Union consumption for the same period but also coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina, which clearly had a positive effect on the Union industry production volumes.

- (112) As a result of the stable production capacity and increased production volumes, the capacity utilisation increased over the period considered by 30 % and was at 69 % by the end of the review investigation period.
- (113) NBB claims that the non-confidential questionnaire responses from some of the sampled companies show high capacity utilisation rates ranging from 78 % to at least 93 %. It is claimed therefore that the lower average capacity utilisation rate of the whole industry is due to structural factors rather than imports. In these circumstances, the capacity utilisation should allegedly not be taken into account as an indicator showing that the Union biodiesel industry is still in a process of recovering from past dumping.
- (114) This claim cannot be accepted. Capacity utilisation is only one of many macroindicators that the Commission considers when analysing the overall situation of the Union industry. The fact that some companies in the sample may have higher utilisation rates is normal since macroindicators are based on the weighted average of the entire Union industry. That some biodiesel producers in the Union have recovered faster, or to a higher degree, than others, particularly in a highly fragmented industry, does not render this indicator superfluous for the overall assessment of the situation of the Union industry.

4.4.2.2. Sales volume and market share

- (115) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2011	2012	2013	RIP
Sales volume on the Union market (metric tonnes)	8 497 073	8 863 191	9 741 548	10 966 576
<i>Index</i>	100	104	115	129
Market share	76,3 %	74,8 %	85,6 %	89,0 %
<i>Index</i>	100	98	112	117

Source: Data provided by EBB (the applicant)

- (116) Union industry sales volumes have increased significantly and in line with its increased production during the period considered. As a result also its market share on the Union market has increased from 76 % at the start of the period considered to 89 % at the end of the review investigation period. The positive evolution of sales volumes and market share shows that current anti-dumping and anti-subsidy measures have had a positive effect for the Union industry.

4.4.2.3. Growth

- (117) Union consumption increased by 11 % over the period considered whilst both production volumes and sales increased by around 30 %. Also capacity utilisation increased by some 30 % while the capacity remained relatively stable with only a small increase. At the same time employment has increased (Table 7 below) whilst the level of investment has decreased (Table 11 below) during the period considered. Overall, it can be concluded that the Union industry is in a period of growth.

4.4.2.4. Employment and productivity

(118) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2011	2012	2013	RIP
Number of employees	2 123	2 125	2 351	2 326
<i>Index</i>	100	100	111	110
Productivity (metric tonne/employee)	4 021	4 301	4 479	4 986
<i>Index</i>	100	107	111	124

Source: Data provided by EBB (the applicant)

- (119) The number of employees in the Union biodiesel industry remained stable in the beginning of the period considered but increased thereafter by 10 % from 2012 to the end of the review investigation period. This trend is fully in line with the trends for other injury indicators, such as production volumes and sales, and is an indication of the on-going recovery from past dumping and subsidisation that the Union industry is currently experiencing.
- (120) Since the increase in employment is proportionally smaller than the increased production of biodiesel, the productivity per employee has improved accordingly, by almost 25 % during the period considered, indicating that the Union industry is becoming a more efficient industry.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

- (121) As mentioned above in recital (40) imports of biodiesel from the USA virtually ceased after the imposition of measures in 2009 and there was no dumping during the review investigation period. Therefore, the magnitude of dumping cannot be assessed. However, the analysis of the injury indicators shows that the measures in place against the USA and the subsequent measures imposed against imports from Argentina and Indonesia have had a positive impact on the Union industry which is deemed to be on a recovering curve from past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (122) The weighted average unit sales prices (ex-works) of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2011	2012	2013	RIP
Average unit sales price in the Union (EUR/metric tonne)	1 105	1 079	964	905
<i>Index</i>	100	98	87	82

	2011	2012	2013	RIP
Unit cost of production (EUR/metric tonne)	1 107	1 153	969	868
<i>Index</i>	100	104	88	78

Source: Verified data from sampled Union producers

- (123) The average sales price in the Union has decreased steadily over the period considered whilst the unit cost of production has followed a similar trend. Since biodiesel is traded as a commodity, the Union industry has not been able to maintain a higher sales price but rather to decrease the price in line with reduced costs of production. Therefore, the Union industry has not been able to fully reap the benefits of lower raw material costs. On the other hand, the cost of production per unit has decreased slightly more than the average unit price which indicates an improved efficiency by the Union industry.

4.4.3.2. Labour costs

- (124) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour cost per employee

	2011	2012	2013	RIP
Average labour costs per employee (EUR)	60 866	59 081	60 802	61 807
<i>Index</i>	100	97	100	102

Source: Verified data from sampled Union producers

- (125) The average labour cost per employee has remained stable throughout the period considered.

4.4.3.3. Inventories

- (126) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2011	2012	2013	RIP
Closing stocks (metric tonnes)	84 734	118 256	92 825	91 202
<i>Index</i>	100	140	110	108
Closing stocks as a percentage of production	4	5	4	3
<i>Index</i>	100	125	100	75

Source: Verified data from sampled Union producers

- (127) Stocks have remained relatively stable at a normal level during the period considered.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (128) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2011	2012	2013	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,0	– 1,4	1,1	3,8
<i>Index</i>	100	– 70	55	190
Cash flow (EUR)	67 930 517	1 004 296	135 656 898	66 832 681
<i>Index</i>	100	1	200	98
Investments (EUR)	12 122 366	9 859 293	9 133 725	8 314 180
<i>Index</i>	100	81	75	69
Return on investments (% on net sales)	14,0	– 14,2	12,5	44,2
<i>Index</i>	100	– 101	89	315

Source: Verified data from sampled Union producers

- (129) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability has increased from 2,0 % in 2011 to 3,8 % by the end of the review investigation period. The profitability dropped however in 2012 to a loss (– 1,4 %) which was most likely due to the effect of significant amounts of dumped imports from Indonesia and Argentina, which replaced the imports that had previously been originating in the USA.
- (130) The net cash flow is the ability of the Union producers to self-finance their activities. Whilst no clear trend can be established during the period considered, the sampled companies maintained over the period a positive cash flow.
- (131) During the period considered investments have decreased. However, in view of the positive cash-flow and the significant increase on the return of investments, as shown in the table above, there are no indications that Union industry would have encountered difficulties in raising capital or make further investments, should such investments have been required during the period considered.
- (132) NBB claims that a profitability of 3,8 % is inconsistent with their own calculations, which were based on data from the non-confidential versions of the questionnaire replies of the sampled EU producers and indicated a profit margin of 8,5 %.

- (133) The Commission analysed this claim and found that NBB reached a different figure on the basis of a methodology/calculation which was flawed for several reasons. First, their calculations of the profitability for the RIP was not based on questionnaire replies as alleged but on sampling data which, however, does not contain information relating to the RIP but to a different period. Second, the cost of production that NBB used to calculate the profitability was based on a cost of production for a different sample of companies used in another investigation and cannot therefore simply be transposed to this investigation. Finally, the Commission established the average profit margin of the sampled companies on the basis of reliable and verified data of those companies. Therefore, NBB's claim is rejected.

4.4.4. Conclusion on injury

- (134) The analysis of the economic indicators shows that production and sales volumes have increased during the period considered whilst the Union consumption has only increased to a lesser extent. As a result the Union industry has increased its market share on the Union market. At the same time both sales prices and the cost of production have decreased at similar levels. This has prevented the Union industry from fully benefitting from the increased sales volumes despite a significant reduction of imports from third countries.
- (135) On the other hand, profitability has remained low during the period considered and the Union industry even suffered losses in 2012. Even the profits that were achieved during the review investigation period, just under 4 %, are significantly below the profit that the Union industry should reasonably achieve under normal market conditions. Also, the Commission recalls that in the original investigation leading to the imposition of the existing measures the Council established the (target) profit that the Union industry should reasonably obtain in the absence of dumping at 15 % ⁽¹⁾. In a subsequent investigation concerning imports of biodiesel originating in Argentina and Indonesia, the profit level that the Union industry should reasonably expect to achieve in the absence of dumping were, however, slightly revised downwards mainly due to increased competition on the Union market and the maturity of the biodiesel industry in the Union and was established at 11 % ⁽²⁾.
- (136) Several of the economic indicators relevant for the analysis of the current state of the Union industry show a positive trend and hence indicate that the anti-dumping measures in place have had a positive effect on the Union industry. However, the profit level of the Union industry is still very low and significantly below the target profit as established in previous investigations. Moreover, the level of investment is low and also decreased during the period considered by 30 % and the capacity utilisation, albeit increasing, is still below 70 % compared to an utilisation rate around 90 % when dumped imports were absent from the Union market (2004-2006) and the Union industry was considered to be in a healthy situation ⁽³⁾.
- (137) Based on an overall analysis of all economic indicators, the Commission has concluded that Union industry has not yet fully recovered from the effects of past dumping. It is still in an economically and financially fragile situation and the current positive trend could easily be reverted should dumped imports from the USA recur in significant volumes.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (138) To assess the likelihood of recurrence of injury to the Union industry should the existing measures be allowed to lapse, the Commission analysed the likely impact of imports from the USA on the Union market and on the Union industry pursuant to Article 11(2) of the basic Regulation. In particular, the Commission analysed the likelihood of recurrence of dumped imports, the volumes and the likely price levels thereof, spare capacity, the attractiveness of the union market and pricing behaviour of US producers.
- (139) As concluded above (recital (92)), it is likely that dumped imports from the USA would recur should the existing measures be allowed to lapse. The Commission has established that producers of biodiesel in the USA are currently dumping at other third country markets at price levels that are below the Union prices. Since the Union prices are slightly higher than those in other third country markets it is likely that at least some of those exports may be redirected to the Union should the existing measures lapse.

⁽¹⁾ Regulation (EC) No 599/2009, recitals 181-183.

⁽²⁾ Implementing Regulation (EU) No 1194/2013, recitals 202-208.

⁽³⁾ Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

- (140) The Commission has established that US producers have a large spare capacity amounting to around 2 678 000 tonnes equivalent to around 22 % of the total Union consumption.
- (141) The spare capacity available in the USA is not likely to be absorbed by its domestic market. Already today, despite sufficient capacity, US producers are not supplying the full demand on the US market. It is also unlikely that the existing spare capacity would be used to increase exports to third countries other than the Union. Currently, as described in detail in recitals (42)-(63) above, the US export prices to third countries are on average 15 % below the average domestic price on the US market and also below the average Union price even where transportation costs from the USA to the Union are taken into account. It is therefore likely that US producers would seek another outlet for their spare capacity.
- (142) Given that the Union market is the biggest market for biodiesel worldwide and with biodiesel prices that are in parity or slightly above the price level on the US domestic market, the Union market would be very attractive for US producers of biodiesel.
- (143) It is therefore very likely that US producers would use a large part of their spare capacity to re-enter the Union market should the existing measures be allowed to lapse. As established above (recital (46)), it is likely that the US producers will export biodiesel to the Union at dumped price levels in order to compete with Union producers on the Union market. Given their current pricing behaviour on other export markets (recitals (57)-(58) above) and the large spare capacity available it is very likely that significant volumes of US biodiesel would re-enter the Union market at dumped prices equal to, or below the Union prices.
- (144) Such imports would exercise a significant pressure and even downwards price pressure on Union industry, which at current price levels, is only making a very small profit, which is significantly below its target profit. This would most likely result in a decrease of production and sales volumes, less profitability and loss of market share.
- (145) Given the fragile economic situation of the Union industry, such likely scenario would have a significant adverse effect on the ongoing recovery of the Union industry and would in all likelihood cause recurrence of material injury.

5.1. Conclusion

- (146) On the basis of the above, the Commission has concluded that material injury to the Union industry would most likely recur should the existing measures against imports of biodiesel from USA be allowed to lapse.

6. UNION INTEREST

- (147) In accordance with Article 21 of the basic Regulation, the Commission examined whether it would be against the Union interest to maintain the measures in place despite the findings above on the likely recurrence of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and importers as well as users of biodiesel.

6.1. Interest of the Union industry

- (148) The existing measures have contributed to an almost total reduction of dumped imports of biodiesel from the USA and offered relief to the Union industry. While the Union industry has shown positive signs of recovery from past dumping, such as increased production and sales volume, biodiesel prices on the Union market have decreased significantly and the profitability has remained very low, thus leaving the industry in a fragile and vulnerable economic situation.
- (149) If the existing measures were allowed to lapse, the Union industry would most certainly be faced with increased unfair competition in the form of significant volumes of dumped imports of biodiesel from the USA. This would put a halt to the on-going recovery which the Union biodiesel industry is currently experiencing and most likely result in the recurrence of material injury. Terminating the measures is therefore not in the interest of the Union industry.

6.2. Interest of unrelated importers and traders

- (150) Only three importers/traders came forward and made their views known. Whilst one company claimed that the level of current duties is disproportionate and that extension would distort and limit the market resulting in higher prices, the other two companies claimed that the existing measures had not affected their activities and were neutral as to a possible extension of the existing anti-dumping measures.
- (151) The findings of this investigation do not support the argument that a continuation of the existing measures would limit the market and result in higher prices. On the contrary, during the period considered, Union prices have decreased despite the existence of measures. In addition, the Union industry has today sufficient capacity to supply Union demand for biodiesel and also spare capacity to satisfy a future increase in demand. Therefore, the arguments put forward do not provide evidence that the continuation of existing measures would be against the interest of importers and/or traders.

6.3. Interest of users

- (152) Only one user, an oil company which purchases biodiesel to blend with mineral oils, came forward and made its view known to the Commission. It was strongly in favour of maintaining the existing measures and claimed that their removal could have devastating effects on the Union biodiesel market leading to an influx of significant volumes of dumped biodiesel which would result in a recurrence of severe injury to the Union biodiesel industry.
- (153) There are no indications that the existing measures have negatively affected the Union users of biodiesel, and notably, there is no evidence that the existing measures have had an adverse effect on their profitability or business. In any event, due to the stable or only slightly increase in Union consumption of biodiesel in the Union, the Union industry has enough capacity to satisfy current and future demand should the demand further increase. Maintaining the measures would not lead to a lack of supply.
- (154) It can therefore be concluded that maintaining the measures would not be against the interest of users.

6.4. Conclusion on Union interest

- (155) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain the existing measures on imports of biodiesel originating in the USA.

7. ANTI-DUMPING MEASURES

- (156) In view of the conclusions reached with regard to the likelihood of continuation or recurrence of dumping and injury, it follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of biodiesel originating in the USA, imposed by Regulation (EC) No 599/2009, as amended by Implementing Regulation (EU) No 444/2011, should be maintained for an additional period of five years.
- (157) As outlined in recital (2) above, the anti-dumping duties in force on imports of biodiesel from the USA were extended to cover also imports of the same product consigned from Canada, whether declared as originating in Canada or not, and to imports into the Union 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.
- (158) The anti-dumping duties to be maintained shall continue to be extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not as well as to 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.

(159) The exporting producers from Canada that were exempted from the measures, as extended by Implementing Regulation (EU) No 444/2011, shall also be exempted from the measures imposed by this Regulation.

(160) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed 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, originating in the USA, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 15 (TARIC code 2710 20 15 29), ex 2710 20 17 (TARIC code 2710 20 17 29), ex 3824 90 92 (TARIC code 3824 90 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 39, 3826 00 10 49, 3826 00 10 99), and ex 3826 00 90 (TARIC code 3826 00 90 19).

2. The rates of the definitive anti-dumping duty applicable to the, net free-at-Union-frontier price, before duty, of the product described in paragraph 1, and manufactured by the companies listed below, shall be a fixed amount as follows:

Company	AD duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	68,6	A933
Cargill Inc., Wayzata	0	A934
Green Earth Fuels of Houston LLC, Houston	70,6	A935
Imperium Renewables Inc., Seattle	76,5	A936
Peter Cremer North America LP, Cincinnati	198,0	A937
World Energy Alternatives LLC, Boston	82,7	A939
Companies listed in Annex I	115,6	See Annex I
All other companies	172,2	A999

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3, of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, the amount of anti-dumping duty laid down in paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

4. The application of the individual duty rate specified for the companies listed in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.
5. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 2

1. The definitive anti-dumping duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is hereby extended to imports into the Union 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, consigned from Canada, whether declared as originating in Canada or not, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 15 (TARIC code 2710 20 15 21), ex 2710 20 17 (TARIC code 2710 20 17 21), ex 3824 90 92 (TARIC code 3824 90 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 30, 3826 00 10 40, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'all other companies' in Article 1, paragraph 2, which is a definitive anti-dumping duty of EUR 172,2 per tonne net.

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3 of Regulation (EEC) No 2454/93, the amount of anti-dumping duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.
3. The application of the exemptions granted to companies listed in paragraph 1 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate as imposed by Article 1, paragraph 1 to 'all other companies' shall apply.
4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 3

1. The definitive anti-dumping duty as set out in Article 1, paragraph 2, is hereby extended to imports into the Union 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 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, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 43 (TARIC code 2710 19 43 30), ex 2710 19 46 (TARIC code 2710 19 46 30), ex 2710 19 47 (TARIC code 2710 19 47 30), ex 2710 20 11 (TARIC code 2710 20 11 30), ex 2710 20 15 (TARIC code 2710 20 15 30), ex 2710 20 17 (TARIC code 2710 20 17 30), ex 3824 90 92 (TARIC code 3824 90 92 20), and ex 3826 00 90 (TARIC code 3826 00 90 30)..

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3, of Regulation (EEC) No 2454/93, the amount of anti-dumping duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

3. The application of the individual duty rate specified for the companies listed in Article 1, paragraph 2, shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex III. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 4

1. Requests for exemption from the duty extended by Article 2(1) and Article 3(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Rue de la Loi 170, CHAR 04/034
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 599/2009, from the duty extended by Article 2(1) and Article 3(1).

Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 14 September 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX I

Company Name	City	TARIC additional code
American Made Fuels, Inc.	Canton	A940
AG Processing Inc.	Omaha	A942
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy, LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels, Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel, LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels, LLC	Tulsa	A940
ED & F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels, Inc.	Madison	A940
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel, LP (BioSelect Fuels)	Houston	A940

Company Name	City	TARIC additional code
Geo Green Fuels, LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries, Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents, Inc.	Salt Lake City	A940
Incobrasa Industries, Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels, Inc.	Newark	A940
Iowa Renewable Energy, LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels, LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries, LLC	Wilton	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Memphis Biofuels, LLC	Memphis	A942
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels, LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County, LLC	Clinton	A940
Nova Biosource	Seneca	A940
Organic Fuels, Ltd	Houston	A940
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs, Inc.	Rome	A940

Company Name	City	TARIC additional code
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Basnett	A940
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston, LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Scott Petroleum	Itta Bena	A942
Seminole Biodiesel	Bainbridge	A940
Soy Solutions	Milford	A940
SoyMor Biodiesel, LLC	Albert Lea	A940
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940
U.S. Biofuels, Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vinmar Overseas, Ltd	Houston	A938
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel, LLC	Farley	A940
Western Iowa Energy, LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(4) and Article 2(3):

- the name and function of the official of the entity issuing the commercial invoice,
- the following declaration:

'I, the undersigned, certify that the (volume) 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 sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [countr[y]ies concerned]. I declare that the information provided in this invoice is complete and correct.'

ANNEX III

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 3(3):

- the name and function of the official of the entity issuing the commercial invoice.
- the following declaration:

'I, the undersigned, certify that the (volume) 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 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in the United States of America. I declare that the information provided in this invoice is complete and correct.'

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1266**of 29 July 2021****imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigations and measures in force**

- (1) By Regulation (EC) No 599/2009 ⁽²⁾, the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198 per tonne 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 under 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 anti-dumping duty imposed by that regulation is hereafter referred to as the 'original measures'. The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) By Council Implementing Regulation (EU) No 444/2011 ⁽³⁾, following an anti-circumvention investigation, the Council extended the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports 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, both located in Ontario, Canada. By the same Regulation the Council also extended the definitive anti-dumping duty imposed by Council Regulation (EC) No 599/2009 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 USA.
- (3) By Implementing Regulation (EU) 2015/1518 ⁽⁴⁾, the European Commission re-imposed the definitive anti-dumping measures on imports of biodiesel originating in the USA following an expiry review (the 'previous expiry review').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 26).

⁽³⁾ Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 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 anti-dumping duty imposed by Regulation (EC) No 599/2009 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 (OJ L 122, 11.5.2011, p. 12).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 239, 15.9.2015, p. 69).

- (4) Moreover, Regulation (EU) 2015/1518 as amended by Regulation (EU) 2016/676 ⁽⁵⁾, also extended the definitive anti-dumping duty to imports 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, both located in Ontario, Canada as well as DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada. By the same Regulation, the European Commission also extended the definitive anti-dumping duty 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 USA.
- (5) The anti-dumping duties currently in force are fixed amounts ranging between EUR 0 per tonne and EUR 198 per tonne on imports from the sampled exporting producers, EUR 115,6 per tonne on imports from the non-sampled cooperating companies and a fixed amount of EUR 172,2 per tonne on imports from all other companies.
- (6) In addition, by Commission Implementing Regulation (EU) 2017/1598 ⁽⁶⁾, Regulation (EU) 2015/1518 was amended by allowing companies that did not export biodiesel during the original investigation period to request a review whether they can be made subject to the duty rate imposed on the cooperating companies not in the sample.
- (7) By Commission Implementing Regulation (EU) 2018/1121 ⁽⁷⁾, following a request for new exporting producer treatment, Regulation (EU) 2015/1518 was amended by adding the US company Organic Technologies, Coshocton (Ohio) to Annex I and thus subject to the weighted average duty of EUR 115,6 per tonne applicable to cooperating companies not included in the sample.

1.2. Request for an expiry review

- (8) Following the publication of a notice of impending expiry ⁽⁸⁾ the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (9) The request for review was lodged on 11 June 2020 by the European Biodiesel Board ('EBB' or 'the applicant'), on behalf of Union producers representing more than 25 % of the total Union production of biodiesel. The request for review was based on the grounds that the expiry of the measures would likely result in recurrence of dumping and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (10) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review the Commission initiated, on 14 September 2020, an expiry review with regard to imports of biodiesel originating in the USA, on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁹⁾ ('the Notice of Initiation').
- (11) On the same date, the Commission initiated a separate expiry review of the anti-subsidy measures in force concerning imports of biodiesel originating in the USA ⁽¹⁰⁾.

⁽⁵⁾ Commission Implementing Regulation (EU) 2016/676 of 29 April 2016 amending Implementing Regulation (EU) 2015/1518 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 116, 30.4.2016, p. 31).

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/1598 of 22 September 2017 amending Commission Implementing Regulation (EU) 2015/1518 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 245, 23.9.2017, p. 1).

⁽⁷⁾ Commission Implementing Regulation (EU) 2018/1121 of 10 August 2018 amending Commission Implementing Regulation (EU) 2015/1518 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 204, 13.8.2018, p. 33).

⁽⁸⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 18, 20.1.2020, p. 20).

⁽⁹⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of biodiesel originating in the United States of America (OJ C 303, 14.9.2020, p. 18).

⁽¹⁰⁾ Notice of initiation of an expiry review of the anti-subsidy measures applicable to imports of biodiesel originating in the United States of America (OJ C 303, 14.9.2020, p. 7).

- (12) The Government of Canada commented on this initiation, noting that, if the measures were to be maintained, the exemption granted to three Canadian producers of biodiesel should be retained. The exemption was maintained in Article 2 of the present Regulation.

1.4. Review investigation period and period considered

- (13) The investigation of a continuation or recurrence of dumping covers the period from 1 July 2019 to 30 June 2020 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covers the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. Withdrawal of the United Kingdom from the EU

- (14) This case was initiated on 14 September 2020, that is during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. This period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (15) By a note to the case file ⁽¹¹⁾ on 15 January 2021, the Commission invited UK operators that considered that they nevertheless would still qualify as interested parties to contact it. BP OIL International Limited and Argent Energy requested to continue to be considered as interested parties and were granted this right based on the evidence submitted. In particular, both companies provided proof of the existence of related entities within the respective group active on the Union market. On the other hand, the UK parent company Valero Energy Limited was replaced by its Irish subsidiary Valero Energy Limited Ireland since the latter one is active on the Union market.

1.6. Interested parties

- (16) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known producers in the USA and the US authorities, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.
- (17) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No requests for a hearing were received.

1.7. Sampling

- (18) In the Notice of Initiation, the Commission stated that it might use sampling in accordance with Article 17 of the basic Regulation.

1.7.1. Sampling of Union producers

- (19) On 14 September 2020, the Commission notified to interested parties the provisional sample of Union producers pursuant to Section 5.4 of the Notice of Initiation. It selected the sample on the basis of the size of the production and sales volume of the like product in 2019 as well as the geographic location of the producers of the like product. This sample consisted of three Union producers. The sampled Union producers accounted for 17,5 % of the estimated total production volumes of the like product in the Union and it also ensured a good geographical spread. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline of 7 days of the notification of the provisional sample of Union producers.

1.7.2. Sampling of importers

- (20) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

⁽¹¹⁾ Tron document: t21.000417.

- (21) Only one unrelated importer, Shell Trading Rotterdam BV, provided the requested information and, consequently, the Commission decided that sampling was not necessary.

1.7.3. *Sampling of exporting producers*

- (22) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the USA to provide the information specified in the Notice of Initiation. In addition, the Commission asked the authorities of the country concerned to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (23) At the initiation a copy of questionnaires was made available in the file for inspection by interested parties and on DG Trade's website.
- (24) Three exporting producers in the USA came forward and expressed their willingness to cooperate with the Commission in the investigation. In view of the low number, the Commission decided that sampling was not necessary. Accordingly, all three companies that came forward were requested to complete a questionnaire and submit it to the Commission within the given deadline.

1.8. **Absence of cooperation from the country concerned**

- (25) On 15 October 2020, one of these three companies informed the Commission by an email that it would not cooperate further. Moreover, neither of the two other companies provided the requested information within the required deadline by completing and returning the questionnaire replies.
- (26) On 10 November 2020 the Commission sent a letter informing all three companies about the intention to apply Article 18 of the basic Regulation and base the findings of the investigation on facts available. The US authorities were also informed about this intention. The deadline for providing comments to the letter was 17 November 2020. No comments were received.
- (27) Since none of the three exporting producers in the USA cooperated in the expiry review investigation it was decided to apply the provisions of Article 18 of the basic Regulation and to base findings on the facts available.

1.9. **Questionnaires**

- (28) At initiation, a copy of the questionnaires was made available in the file for inspection by interested parties and on DG Trade's website.
- (29) Questionnaire replies were received from the three sampled Union producers as well as from an unrelated Union importer.

1.10. **Verification**

- (30) Due to the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead cross-checked remotely all the information deemed necessary for its determination in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ⁽¹³⁾. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Union producers

- SAIPOL Bu Diester, France
- CAMPA Iberia S.A.U., Spain
- VERBIO Vereinigte BioEnergie AG, Germany

⁽¹³⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations OJ C 86/6, 16.3.2020.

Importers

— Shell Trading Rotterdam BV, The Netherlands

1.11. Disclosure

- (31) On 21 May 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.
- (32) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

2. PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product concerned**

- (33) The product concerned is the same as in the original investigation and the previous expiry review, namely 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, originating in the USA, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 16 (TARIC code 2710 20 16 29), ex 3824 99 92 (TARIC code 3824 99 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 59, 3826 00 10 99), ex 3826 00 90 (TARIC code 3826 00 90 19) ('the product concerned').
- (34) Biodiesel is a renewable fuel produced from a wide range of raw materials, i.e. vegetable oils such as rapeseed oil, soybean oil, palm oil, used frying oils (UFO), animal fats or biomass.
- (35) Biodiesel is used in the transport sector, mainly blended with mineral diesel (i.e. petroleum/conventional diesel) and very marginally in its pure form (B100).

2.2. Like product

- (36) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and [technical] characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the USA; and
 - the product produced and sold in the Union by the Union industry.
- (37) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (38) The Swedish company Preem AB and Valero Energy Ltd Ireland, fuel producers and suppliers and as such users of the product concerned, argued that Fatty Acid Methyl Ester (FAME) biodiesel and Hydrotreated Vegetable Oil (HVO) biodiesel are two different types of biodiesel, and that HVO should be excluded from the current product scope. In the 2009 Regulation imposing provisional measures ⁽¹³⁾, all types of biodiesel and biodiesel blends were considered to be biodiesel fuels. FAME and HVO can both be blended with diesel and despite some differences in physical characteristics, the product end-use is the same and both products are produced by the Union industry. In addition, the complaint in the original investigation explicitly defined diesel fuel produced from HVOs as part of the product concerned and no party challenged this statement at that time. Therefore, the claim was rejected.

⁽¹³⁾ Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

- (39) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

3.1. Preliminary remarks

- (40) Due to the lack of cooperation as explained in recitals 25 to 27 above, it was not possible to carry out an analysis based on verified data supplied by US producers.
- (41) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available. The Commission therefore made use of the following sources of information: the request for an expiry review and subsequent submissions from the applicant, Eurostat, the Global Trade Atlas ('GTA') and the websites of the US Energy Information Administration ('EIA') and the US Department of Agriculture ('USDA').

3.2. Continuation of dumping

- (42) Following the imposition of measures in 2009, imports of biodiesel from the USA to the Union dropped to almost zero from the year 2013 onwards. For instance, about 156 tonnes were imported from the USA during the RIP (from 1 July 2019 to 30 June 2020). These volumes only represent 0,04 % of total US exports and even less of the Union consumption. Accordingly, the Commission concluded that these low volumes do not provide a sufficient basis for a continuation of a dumping analysis. The Commission therefore focused its investigation on the likelihood of recurrence of dumping should the measures be allowed to lapse.

3.3. Recurrence of dumping

- (43) The Commission analysed whether it was likely that dumping would recur should the measure lapse. In particular, the following elements were analysed; the relationship between prices of the product produced and sold in the Union and in the USA, the relationship between export prices to third countries and prices in the USA, the relationship between export prices to third countries and the price level in the Union, the unused capacities in the USA and circumvention and absorption practices.

3.3.1. *Comparison between prices of the product produced and sold in the Union and in the USA*

- (44) The Commission services made use of two sources of information for establishing the domestic sales price of biodiesel in the US during the RIP: (i) information provided by the US Department of Agriculture (USDA), and (ii) information in the request for the expiry review.
- (45) For the RIP, the information provided by the USDA showed a domestic sales price ex-works of USD 909,05 per tonne. At the euro/dollar average exchange rate during the RIP (1 EUR = 1,105 USD), this amount corresponds to a US domestic sales price of EUR 822,31 per tonne. This is close to the information provided in the request for the expiry review, which mentioned a domestic sales price of USD 918,06 (EUR 820) per tonne. The Commission considered it appropriate to consider the US domestic price as established (EUR 822,31) for its recurrence analysis.
- (46) The average ex-works price of biodiesel sold in the Union by Union producers during the RIP, as shown in table 1 below, was EUR 771 per tonne.
- (47) In order to re-enter the Union market, the US producers would need to sell at a price close to or lower than EUR 771 per tonne. Their final price should also cover the ocean freight and insurance costs and the existing customs duty (6,5 %) applicable to biodiesel. According to data obtained during the investigation, this would amount to approximately EUR 92 per tonne. The Commission based this amount on the amount of (a) transport and freight, as calculated by the applicant and (b) customs duties (6,5 %) applicable to import price of biodiesel from USA as calculated by the Commission after consulting publicly available information such as Global Trade Atlas ('GTA'), and rounded it up to EUR 106 to cover also some additional post-importation expenses.

- (48) As a consequence, should the US producers resume exports to the Union at competitive prices, they would most likely need to do so at an ex-works price less than EUR 665 per tonne which would be lower than their domestic sales price in the US and thus at dumped price levels.

3.3.2. Comparison between export prices to third countries and prices in the USA

- (49) The Commission further analysed the price pattern of US biodiesel exports to third countries during the RIP.
- (50) It consulted publicly available information such as the Global Trade Atlas ('GTA') and extracted the quantities and values of the export of biodiesel under the HS code 3826 00 for the RIP. The export quantities (in tonnes) to all countries (EU included) amount to 389 075 tonnes, of which 14 tonnes were exported to the Union.
- (51) The table below compares the average sales price in US dollars per tonne duly adjusted to ex-works (by deducting 82,52 USD per tonne for the inland freight as indicated in the request for the expiry review) with the average domestic price in the USA for the six countries (outside the EU) to which the USA exported more than 0,1 % of their total exports during the RIP.

Table 1

US export volumes and prices during the RIP

Countries of destination	Export quantities (in tonnes)	Percentage of exports to all countries	Average ex-works price (USD) per tonne	Average ex-works price (EUR) per tonne	Average ex- works US domestic price (EUR) per tonne (see recital 45)
Canada	354 442	91,1	805,33	728,48	822,31
China	12 363	3,2	316,49	286,29	822,31
Norway	3 500	0,9	862,48	780,18	822,31
Peru	2 144	0,6	591,72	535,26	822,31
Mexico	1 204	0,3	661,23	598,13	822,31
South-Korea	475	0,1	363,15	328,49	822,31

Source: GTA

- (52) The table shows that for all six exporting countries the US producers are selling at prices below their domestic sale prices in the range from 5 % to 65 %. Moreover, there is a lot of variation in the export prices among the various countries to which the USA exported the most during the RIP.
- (53) Finally, the table shows that the highest average export prices are those to countries such as Canada and Norway to which the US is selling 92 % of their total exports. The request provides in this respect that the more expensive '*... biodiesel exported to Canada shall be made from specific types of raw materials that have a better resistance to cold temperatures, such as canola, or can also be HVO which has excellent cold properties...*'. As a result, this more expensive average export prices to these two countries is explained by the higher cost price of the feedstock (such as for canola).

3.3.3. Comparison between export prices to third countries and the price level of the Union industry

- (54) The EU market is an attractive market of US exports of biodiesel. Based on the database of the GTA referred to in recital 49 above, a simple average export price to all destinations during the RIP was subsequently calculated (see recital 55 below), taking into consideration the following elements:
- Due to the large variation of US export prices (as also shown in the table in recital 51), the Commission excluded from this calculation all countries which represent for the USA a share below 0,1 % of their total sales volume they exported during the RIP. There were in total six countries (apart from the EU) whose share was above 0,1 % of the total export volumes of the USA as laid down in the table of recital 51.

- As also demonstrated in the same table, the highest average export prices are those to countries such as Canada and Norway to which the US is selling 92 % of their total exports. As explained in recital 53, these higher export prices are due to the higher cost price of the feedstock (such as canola).
- Biodiesel exports to the EU will be mainly a mix of different biodiesel types due to the various climates in the EU. The biodiesel to be used in Northern Europe will mainly be those that have a better resistance to cold temperatures.
- As a consequence, the calculation of a simple average export price for the purposes of the current assessment gives a fair representation of the average price that would be observed on the Union market and avoids giving disproportionate weight to the exports to Canada and Norway, given the mix of biodiesel types that would likely be exported to the Union where climate conditions vary greatly among Member States.

- (55) Taking into account all the above elements, the Commission calculated an average export price amounting to USD 682 per tonne (EUR 617). This average export price of EUR 617 is a FOB price to which the ocean freight and insurance costs need to be added to come to a CIF price. These costs were estimated at about USD 52 per tonne (EUR 47) in the request for an expiry review.
- (56) The Commission considers that the EUR 47 per tonne is a reasonable indication for the additional ocean freight and insurance costs to other destinations. The average US export price to third countries was thus established at EUR 617 (FOB), which is, even if ocean freight were to be added, insurance costs, the existing customs duty (6,5 %) (in total rounded up to 104 euros per tonne to cover also some additional post-importation expenses) from US to the EU (in total around EUR 721) would be far below the Union industry ex-works price of EUR 771 per tonne.
- (57) As a result, this shows that the exporting producers from the USA would be able to sell at a price below EUR 771 per tonne to penetrate the Union market, and that this would be for them an incentive to redirect some of the current exports to third countries towards the Union market, as it is more attractively priced than some other third countries' markets.

3.3.4. Spare capacities

- (58) Due to the lack of US producers' cooperation, the Commission established the US production capacity on the basis of the available information on the website of the US Energy Information Administration (EIA).
- (59) US biodiesel producers must report to this authority (respectively on a yearly and a monthly basis) their existing and planned production capacity, as well as their production, input, stocks and sales of biodiesel.

On the basis of data collected from the EIA, the US biodiesel producers' capacity during the RIP was 8 412 000 tonnes.

- (60) The US actual production of biodiesel during the RIP was 5 718 000 tonnes (EIA's data), which corresponds to a capacity utilisation of 68 % and a spare capacity of 32 %, or around 2 694 000 tonnes. This significant spare capacity of the US producers presents an incentive to increase production and sell biodiesel at dumped prices to the Union market, and is therefore likely to be used to supply the Union market should measures be allowed to lapse. Indeed, the US producers can easily increase their production and export it to the EU with the economic benefit of the increase in capacity utilisation ratio and reduction of unit cost of production. The release in the Union market of the US spare capacity would have a significant impact as it amounts to nearly 18 % of the Union consumption during the RIP.
- (61) Moreover, during the RIP, the US production of biodiesel (5 718 000 tonnes) was lower than the consumption (5 934 000 tonnes). Consequently, the USA was importing more biodiesel than it was exporting. During the RIP the total imports amounted to 629 000 tonnes, and the total exports to 428 000 tonnes. However, if the available production capacity was not used to satisfy the domestic demand during the period considered it is unlikely that such available production capacity would be used in the future for the same purpose. The US production capacity reported in the RIP (8 412 000 tonnes, see previous recital) was significantly higher than the domestic consumption. This means that if export market opportunities open up, the US producers are likely to use their spare capacity for export sales rather than for domestic consumption.

- (62) It is unlikely that the spare capacity would be used to increase exports to third countries other than the EU. The large third country markets (Brazil, Indonesia, Argentina, China, Thailand) are self-sufficient in terms of domestic biodiesel production and the US has thus far not exported much to those countries in spite of its spare capacity. There is no reason to believe that this will change in the future.
- (63) It is therefore likely that US producers would use a substantial part of the spare capacity for additional sales to the EU, which is a very attractive market as it is the biggest in the world with numerous incentives for biodiesel consumption.

3.3.5. Circumvention and absorption practices

- (64) As mentioned in recital 1, the anti-dumping measures imposed in 2009 were found to be circumvented by means of transshipments via Canada and by a change in the composition of the blend. The existence of such practices shows the interest of some US producers to enter the Union market, even after the imposition of measures, and is therefore considered as an indication of the attractiveness of the Union market for US biodiesel producers

3.3.6. Conclusion on the likelihood of a recurrence of dumping

- (65) The Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption. Thus, it would be convenient for US producers to utilise their spare capacity to the full extent and also to divert some of their export sales from other less profitable third countries into the Union market.
- (66) On the basis of the table in recital 51, the Commission concluded that US producers are overall selling to third countries at prices below their domestic prices.
- (67) In this respect, in light of the significant spare capacity of the US industry, combined with the attractiveness of the Union market in terms of size and sales price, in particular with regard to the price level of US exports to third countries, and the records of past circumvention practices, the Commission concluded that dumped imports from the USA are likely to recur if the measures in force were allowed to lapse.

4. INJURY

4.1. Definition of the Union industry and Union production

- (68) According to the data provided by the applicant, the like product was manufactured by 49 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (69) The total Union production during the review investigation period was established at around 14 millions tonnes. The Commission established the figure on the basis of information provided by the Union industry. As indicated in recital 19, three Union producers were selected in the sample representing 17,5 % of the total Union production of the like product.

4.2. Union consumption

- (70) The Commission established the Union consumption on the basis of industry information and Comext for import data.
- (71) Union consumption developed as follows:

Table 2

Union consumption (tonnes) ⁽¹⁴⁾

	2017	2018	2019	Review Investigation period
Total Union consumption (tonnes)	13 843 702	15 444 700	15 762 282	16 955 685
<i>Index</i>	100	112	114	122

Source: Union industry data, Comext

- (72) During the review investigation period, consumption of biodiesel in the Union, calculated as the sum of imports of biodiesel and the total sales of the Union industry on the EU market, increased by 22 %, that is from 13,8 million tonnes in 2017 to 16,9 million tonnes.

4.3. Imports from the country concerned**4.3.1. Volume and market share of the imports from the country concerned**

- (73) The Commission established the volume of imports on the basis of the information provided by Eurostat (Comext database). The market share of the imports was established on the basis of data provided by the applicant for the Union industry domestic sales and Comext for trade data.
- (74) Imports from the country concerned developed as follows:

Table 3

Import volume (tonnes), market share and prices ⁽¹⁵⁾

	2017	2018	2019	Review Investigation period
Volume of imports from the country concerned (tonnes)	176	2 339	139	156
<i>Index</i>	100	1 329	79	89
Market share (%)	0	0	0	0
Average price EUR/tonne	1 243	972	1 269	1 812
<i>Index</i>	100	78	102	146

Source: Comext, EU industry sales data for the calculation of the market share

- (75) Since the imposition of measures in 2009, imports from the US have virtually ceased and amounted to only 156 tonnes during the RIP (as compared to more than 1 137 000 tonnes during the original investigation period).

⁽¹⁴⁾ Consumption is based on EU-27 data, excluding data related to the United Kingdom.

⁽¹⁵⁾ The import volume is based on EU-27 data, excluding data related to the United Kingdom.

4.3.2. Prices of the imports from the country concerned and price undercutting

- (76) There were virtually no imports of biodiesel from the US to the Union during the review investigation period that could be used as a reliable basis for calculating undercutting.
- (77) As an alternative, the Commission determined the price undercutting during the review investigation period by comparing:
- (1) the weighted average sales prices of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level (771 EUR/tonne); and
 - (2) the average export price of US producers to third countries, duly adjusted for transport cost to the Union and EU customs duty (721 EUR/tonne – see recital 56).
- (78) The result of the comparison was a price undercutting of 6,4 %.

4.4. Imports from third countries other than the US

- (79) During the RIP, imports from third countries amounted to 3 750 000 tonnes or approximately 22 % of the overall Union consumption. The main sources of imports of biodiesel other than the US were Argentina (24 % of EU imports), Malaysia (18 %), Singapore (13 %) and Indonesia (5 %).
- (80) The (aggregated) volume of imports as well as the market share and price trends for imports of biodiesel from other third countries developed as follows:

Table 4

Imports from third countries ⁽¹⁶⁾

Country		2017	2018	2019	Review Investigation period
Argentina	Volume (tonnes)	355 782	1 467 325	873 325	905 781
	Index	100	412	245	255
	Market share (%)	3	10	6	5
	Average price EUR/tonne	635	620	707	728
	Index	100	98	111	115
Malaysia	Volume (tonnes)	335 769	388 615	731 679	679 860
	Index	100	116	218	202
	Market share (%)	2	3	5	4
	Average price EUR/tonne	952	813	669	730
	Index	100	85	70	77

⁽¹⁶⁾ Imports from third countries are based on EU-27 data, excluding data related to the United Kingdom as a Member State but including data related to the United Kingdom as a third country.

Indonesia	Volume (tonnes)	24 984	777 992	743 456	195 858
	<i>Index</i>	100	3 114	2 976	784
	Market share (%)	0	5	5	1
	Average price EUR/tonne	803	671	636	665
	<i>Index</i>	100	84	79	83
Other third countries	Volume (tonnes)	822 027	820 093	1 450 938	1 983 471
	<i>Index</i>	100	100	177	241
	Market share (%)	6	5	9	12
	Average price EUR/tonne	662	723	829	874
	<i>Index</i>	100	109	125	132
Total of all third countries except the US	Volume (tonnes)	1 538 562	3 454 050	3 799 448	3 765 041
	<i>Index</i>	100	224	247	245
	Market share (%)	11	22	24	22
	Average price EUR/tonne	721	678	732	802
	<i>Index</i>	100	94	102	111

Source: Comext, EU industry sales data for the calculation of the market share

- (81) Anti-dumping duties on imports from Argentina and Indonesia – two major biodiesel exporting countries – were removed in 2018. Consequently, imports from third countries increased in 2018 and stayed at a level of around 3,8 million tonnes in 2019 and during the RIP. Overall, imports from third countries except the US increased by 145 % during the period considered. In addition, their market share increased from 11 % to 22 % during the period considered.
- (82) As far as prices are concerned, the situation is different from one country to another.
- (83) Regarding Argentina, the main source of imports, in February 2019, the Commission imposed definitive anti-subsidy measures on imports of biodiesel from this country, and, in parallel, adopted a decision accepting minimum price undertakings from eight Argentine producers and the Argentinian Chamber of Biofuels (CARBIO). This led to a significant increase in prices for year 2019 (by 14 % in comparison with 2018) and the RIP (by 17 % in comparison with 2018).
- (84) Regarding Indonesia, the European Commission imposed in 2019 countervailing duties on imports of subsidised biodiesel from Indonesia. This led to a significant decrease in imports originating from Indonesia for the year 2020.

- (85) For Indonesia and Malaysia, prices were decreasing. At the same time, for the other third countries, they were significantly increasing. Overall, the average sales prices of imports from third countries other than the USA increased during the period considered by 11 % during the period considered. This trend is consistent with the trend observed for imports from the countries concerned in Table 3 above. However, the price trend is different in comparison with the sales prices of the Union industry on the Union market in Table 8 below. The prices of the sampled Union producers were decreasing, in line with the decrease in production costs. The consequence is that the price gap between third countries exporters and the sampled Union producers reduced, increasing the competitiveness of the Union industry.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (86) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (87) As mentioned in recitals 18 and 19, sampling was used for the assessment of the economic situation of the Union industry.
- (88) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. It evaluated the macroeconomic indicators on the basis of data provided by the EU industry and other sector-specific macroeconomic data such as the FAO-OECD. It evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (89) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (90) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. Macroeconomic indicators ⁽¹⁷⁾

4.5.2.1. Production, production capacity and capacity utilisation

- (91) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation period
Production volume (tonnes)	12 639 715	13 166 083	13 931 438	13 984 220
<i>Index</i>	100	104	110	111
Production capacity (tonnes)	16 047 231	16 707 893	16 862 595	17 529 047
<i>Index</i>	100	104	105	109
Capacity utilisation (%)	79	79	83	80
<i>Index</i>	100	100	105	101

Source: Information provided by the applicant and the sampled Union producers

⁽¹⁷⁾ The macroeconomic data was based on EU-27 excluding data from the UK.

- (92) Union production increased from 12,6 million tonnes in 2017 to 14,0 million tonnes during the RIP, that is an increase by 11 % during the period considered. In a situation of consumption increase by 22 % over the period considered, the Union industry responded positively by increasing its production.
- (93) At the same time the production capacity increased by 9 % during the period considered and reached 17,5 million tonnes during the RIP. The Union industry is developing its capacity to respond to an increasing demand. According to a report ⁽¹⁸⁾, this capacity expansion concerns mainly Hydrotreated Vegetable Oil (HVO) production.
- (94) As a result of the simultaneous increase of the production and the production capacity, the capacity utilisation was stable during the period considered, at around 80 %.

4.5.2.2. Sales volume and market share

- (95) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2017	2018	2019	Review Investigation period
Sales volume on the Union market (tonnes)	12 305 049	11 988 560	11 962 754	13 190 560
<i>Index</i>	100	97	97	107
Market share (%)	89	78	76	78
<i>Index</i>	100	87	85	88

Source: Information provided by the applicant and the sampled Union producers

- (96) The Union industry increased their sales on the Union market from 12,3 million tonnes in 2017 to 13,2 million tonnes during the RIP (+ 7 %).
- (97) Since the consumption in the Union increased by 22 %, because of the lower increase in the actual sales volume, the market share of the Union industry decreased, from around 89 % in 2017 to 78 % during the RIP. This decrease of market share is linked to the increase of imports from third countries especially from 2018 onwards (recital 80).

4.5.2.3. Growth

- (98) A number of indicators (production, production capacity, sales, employment) demonstrate a positive growth of the Union industry during the period. Yet, this growth is moderate as compared to the development of the consumption of biodiesel during the same period. In fact, the market share of the Union industry actually decreased during the reference period.

⁽¹⁸⁾ USDA, Biofuels Annual report (GAIN report), 29 June 2020.

4.5.2.4. Employment and productivity

(99) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2017	2018	2019	Review Investigation period
Number of employees	2 643	3 126	3 527	3 909
Index	100	118	133	148
Productivity (tonne/employee)	4 782	4 211	3 950	3 577
Index	100	88	83	75

Source: Information provided by the applicant and the sampled Union producers

(100) During the period considered, employment grew from 2 643 to 3 909, an increase of 48 %.

(101) As production grew to a lesser extent (+ 11 %), this materialised in a decrease in productivity (-25 %).

4.5.2.5. Magnitude of the dumping margin and recovery from past dumping

(102) As explained in recital 42, it was not possible to make a determination of dumping during the review investigation period. The investigation therefore focused on the likelihood of a recurrence of dumping should the anti-dumping measures be repealed.

(103) In the previous expiry review the Union industry showed signs of recovery from the effects of past dumping. During the period considered of the current expiry review investigation, the recovery process continued as demonstrated by a favourable trend for the Union industry of the main injury indicators.

4.5.3. Microeconomic indicators ⁽¹⁹⁾

4.5.3.1. Prices and factors affecting prices

(104) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2017	2018	2019	Review Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	834	801	771	771
Index	100	96	92	92

⁽¹⁹⁾ Microeconomic indicators are based on EU-28 data, including the United Kingdom. Based on the low volume of sales of the sampled Union producers to the United Kingdom (approx. 1,1 % of the average EU sales of those producers in the RIP), the impact of transactions concerning the United Kingdom would appear to be minimal on the injury findings, and the conclusions on material injury would therefore not have been altered when using EU-27 data.

Average price of vegetable oils (<i>Index</i>)	100	86	81	86
Unit cost of production (EUR/tonne)	828	778	760	755
<i>Index</i>	100	94	92	91

Source: Sampled companies, FAO for the vegetable oil price index

- (105) During the period considered the cost of production decreased by 9 % (from 828 EUR/tonne to 755 EUR/tonne). This is partly due to the decrease in the price of vegetable oils which was on the decrease over the period. While not all biofuel is made of vegetable oils, the price of vegetable oils is a good proxy for the price of the main input for the production of biodiesel.
- (106) The average sales price decreased by 8 %, from 834 EUR/tonne in 2017 to 771 EUR/tonne during the RIP. This can be linked to the decrease observed in the price of production.

4.5.3.2. Labour costs

- (107) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2017	2018	2019	Review Investigation period
Average labour costs per employee (EUR)	63 785	70 533	72 306	72 533
<i>Index</i>	100	111	113	114

Source: Sampled companies

- (108) The average labour cost in the sampled companies increased by 14 % over the RIP. The impact of this variation is rather small given that labour cost represent only about 3 % of the total cost of manufacturing.

4.5.3.3. Inventories

- (109) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	99 868	126 345	124 567	114 216
<i>Index</i>	100	127	125	114
Closing stocks as a percentage of production	0,8	1,0	0,9	0,8
<i>Index</i>	100	121	113	103

Source: Sampled companies

- (110) The level of inventory was stable at around 1 % of the production. This is a very low ratio indicating that the industry is able to work on demand and limit the inventory. This is also necessary to avoid biodiesel degradation.

4.5.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (111) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	0,96	2,13	1,78	2,84
<i>Index</i>	100	223	186	297
Cash flow (EUR)	45 139 254	10 723 312	54 431 877	58 021 678
<i>Index</i>	100	24	121	129
Investments (EUR)	40 430 425	20 634 073	34 169 705	17 028 015
<i>Index</i>	100	51	85	42
Return on investments (%)	22	29	25	44
<i>Index</i>	100	128	112	198

Source: Sampled companies

- (112) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability remained at a low level. Yet it shows a slightly positive trend over the period considered increasing from 1 % to 3 %. This was linked to the decreasing cost of production for the sampled companies (- 9 %). Behind this average, there is however a great disparity among the sampled Union producers with some companies not making any profit at all.
- (113) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed positively toward the end of the period considered (in 2019 and first half of 2020), but the year 2018 saw a sharp drop in cashflow. The drop in 2018 is impacted mainly by the specific situation of one of the sampled companies, which has a special business model. For the other two sampled companies the trend was relatively stable.
- (114) Investments in the sampled companies does not present a clear trend over the period considered. Investment from one or the other sampled company or the absence thereof can bring the level of investments up and down from one year to the other. Investments represented about 1-2 % of turnover during the period considered, which is limited.
- (115) The return on investments (ROI) is the profit in percentage of the net book value of investments. It developed positively over the period considered and remained high in the RIP. This high ROI is however mainly linked to low net book value of investments, rather than high profit.

4.6. Conclusion on injury

- (116) During the period considered, in the context of almost non-existent imports from the USA, the volumes of imports from third countries increased significantly (by 145 %), but their price level increased as well (by 11 %). At the same time the prices of the Union industry decreased (by 8 %), in line with a decrease in the production costs (by 9 %). Consequently, the price gap between third countries exporters and the sampled Union producers narrowed, thereby increasing the competitiveness of the Union industry.
- (117) Overall, the injury indicators depict a positive trend during the period considered, in particular with regard to production (+ 11 %), production capacity (+ 9 %) and sales (+ 7 %) and show that the Union biodiesel industry is slowly recovering from past injury. The analysis of the injury indicators demonstrates that the Union industry is currently not suffering from material injury. However, some indicators, in particular a low profitability ($\leq 3\%$) indicate that it is nevertheless still in a fragile economic situation.
- (118) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (119) The Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury to be caused by the dumped imports from the US if the measures were allowed to lapse.
- (120) In this regard, the Commission examined the production capacity and spare capacity in the US, the likely price levels of imports from the US in the absence of anti-dumping measures, and their impact on the Union industry including undercutting without anti-dumping measures

5.1. Production capacity and spare capacity in the US

- (121) As described in section 3.3.4 above, the quantities that could be exported by US biodiesel producers are significant compared to the size of the Union market. Indeed, the spare capacities represent 18 % of the Union consumption during the RIP. Consequently, the Commission concluded that the spare capacities available are significant.

5.2. The likely price levels of imports from the US in the absence of anti-dumping measures

- (122) As described in section 3.3.2 above, based on the current pricing behaviour on third countries export markets, the US producers exported to their main third markets at prices lower than the domestic prices in the US. In addition, as indicated in recitals 77-78 above, those prices are also on average undercutting the Union industry prices on the Union market by 6,4 %. Therefore, taking into account the price level of exports from the USA to other third markets, exporting to the Union is potentially much more attractive for US exporters. In addition, as indicated in section 3.3.6 above the Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption.

5.3. Likely impact on the Union industry

- (123) Therefore, if measures were allowed to lapse, significant volumes of dumped biodiesel from the USA would exert a very strong downward pressure on Union prices and have a significant impact on the Union industry's economic situation. As a result, it is likely that Union industry production and sales volumes would decrease and the small profits currently achieved by the industry would turn into losses.
- (124) The Commission further assessed the possible impact of the imports by modelling two possible scenarios should the measures be allowed to lapse, namely (1) a surge of imports from the US and (2) a drop of prices in the EU due to increased competition, all other things being equal.

- (125) In the first scenario, the Commission modelled two possible levels of US imports. The first option entailed that imports from the US would come at their historical volumes (during the initial IP ⁽²⁰⁾), that is 1,1 million tonnes. As a result of the increase in imports from the US and the consequent decrease in sales of the EU industry, the profitability of the EU industry would fall by 0,14 % point, that is from + 2,84 % to + 2,70 %. The second option took into account the very significant increase in the size of the EU market from 6,6 million tonnes during the initial IP to 17 millions tonnes during the RIP (+ 158 %). In that context, the Commission modelled a surge of imports corresponding to the same market share for the US of 17,2 % as during the initial investigation period. The result was that the profitability of the Union industry would fall by 0,41 % point from + 2,84 % to 2,43 %. In both cases, the impact of a surge of US imports, at constant prices, can be described as rather moderate. This is linked to the high share of the variable costs in the biodiesel industry.
- (126) In the second scenario, the effect of a price decrease was found to be potentially highly damaging. In case of a decrease of Union prices to the level of US exports prices to third countries (721 EUR/tonne), the profit would drop from + 2,84 % to -3,88 %. In case of a decrease of Union prices by 10 %, that is from 771 EUR/tonne to 694 EUR/tonne, the profit would be reduced from + 2,84 % to - 7,94 %. In any case, any price decrease higher than -2,9 % would zero the Union industry profit.
- (127) In reality, if measures were allowed to lapse, it is very likely that a combination of the two scenarios above would occur on the market. In particular, significant volumes of biodiesel originating in the USA could be expected to enter the Union market and at lower prices than the Union industry. As a result, the market share of the Union industry would shrink as well as their prices. This would result in significant losses to the Union industry.

5.4. Conclusion on likelihood of recurrence of injury

- (128) On this basis, and noting the current fragile situation of the Union industry, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the USA at injurious prices and material injury would be likely to recur.

6. UNION INTEREST

- (129) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users. In line with Article 21(1) third sentence of the basic Regulation special consideration was given to the need to protect the industry from the negative effects of injurious dumping.

6.1. Interest of the Union industry

- (130) If existing measures were allowed to lapse, the Union industry will most certainly be faced with increased unfair competition from the US biodiesel producers most likely putting an abrupt halt to the on-going recovery of the Union industry.
- (131) The Commission concluded that the continuation of the measures would be in the interest of the Union industry.

6.2. Interest of unrelated importers

- (132) No importer opposed the prolongation of the measures.
- (133) Shell Trading Rotterdam argued that the measures, by limiting the supply of the Union market, will lead to increased prices. It also noted the availability of the biodiesel from other markets.

⁽²⁰⁾ 1 April 2007 to 31 March 2008.

- (134) The measures do not seem to affect significantly the importers as alternative sources of supplies are available. This is evidenced by the significant market share of imports from third countries.
- (135) The Commission therefore concluded that the continuation of the measures would not pose a significant detriment to the interest of the importers.

6.3. Interest of users

- (136) The participation of users in the investigation was limited.
- (137) Two users, Preem, the largest fuel company in Sweden, and Valero Energy Ltd Ireland claimed that the prolongation of the measures will be a direct hindrance for the green development of the transport sector in Europe. Preem and Valero Energy Ltd Ireland requested specifically that HVO should be excluded from the current product scope as they expect a shortage of HVO in the coming years. Valero Energy Ltd Ireland specifically referred to the EU renewable energy targets for transport for 2030, claiming that those targets would not be met given current EU production.
- (138) The Commission observed that Union producers have enough capacity to satisfy the current demand and even spare capacity to satisfy future increase and exports if need be. Furthermore, it was too early to assess with confidence whether shortages are likely to materialise in 2030, given, in particular, recent expansions in EU capacity. This said, the Commission may be in a better position to assess the situation in case it is asked to conduct an expiry review in five years' time. Consequently, this claim was dismissed.
- (139) There are no indications that the existing measures in force have affected negatively the Union users of biodiesel, and notably there is no evidence that existing measures had an adverse impact on their profitability.
- (140) The Commission therefore concluded that the continuation of the measures would not be detrimental to the interest of the users.

6.4. Conclusion on Union interest

- (141) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of biodiesel originating in the USA.

7. ANTI-DUMPING MEASURES

- (142) On the basis of the conclusions reached by the Commission with regard to the likelihood of continuation or recurrence of dumping and injury, it follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of biodiesel originating in the USA, imposed by Commission Implementing Regulation (EU) 2015/1518, as amended by Regulation (EU) 2016/676, should be maintained.
- (143) As outlined in recital (1) above, the anti-dumping duties in force on imports of biodiesel from the USA were extended to cover also imports of the same product consigned from Canada, whether declared as originating in Canada or not, and 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 USA.
- (144) The anti-dumping duties to be maintained shall continue to be extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not as well as to 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.
- (145) The exporting producers from Canada that were exempted from the measures, as extended by Implementing Regulation (EU) 2015/1518, shall also be exempted from the measures imposed by this Regulation.

- (146) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation.
- (147) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²¹⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed 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, originating in the United States of America currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 16 (TARIC code 2710 20 16 29), ex 3824 99 92 (TARIC code 3824 99 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 59, 3826 00 10 99) and ex 3826 00 90 (TARIC code 3826 00 90 19).

2. The rates of the definitive anti-dumping duty applicable to the net free-at Union frontier price, before duty, of the product described in paragraph 1, and manufactured by the companies listed below, shall be a fixed amount as follows:

Company	AD duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	68,6	A933
Cargill Inc., Wayzata	0	A934
Green Earth Fuels of Houston LLC, Houston	70,6	A935
Imperium Renewables Inc., Seattle	76,5	A936
Peter Cremer North America LP, Cincinnati	198,0	A937
World Energy Alternatives LLC, Boston	82,7	A939
Companies listed in Annex I	115,6	See Annex I
All other companies	172,2	A999

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

3. The application of the individual duty rate specified for the companies referred to in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

⁽²¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

4. Where any party from the United States of America provides sufficient evidence to the Commission that:
- it did not export the goods described in Article 1(1) originating in the United States of America during the period of investigation (1 April 2007-31 March 2008);
 - it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
 - it has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation;

the Commission may amend Annex I in order to attribute to that party the duty applicable to cooperating producers not included in the sample, i.e. EUR 115,6 per tonne.

Article 2

1. The definitive anti-dumping duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is extended to 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, consigned from Canada, whether declared as originating in Canada or not, currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), with the exception of those produced by the companies listed below:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada	C114
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108

The duty to be extended shall be the one established for 'all other companies' in Article 1(2), which is a definitive anti-dumping duty of EUR 172,2 per tonne net.

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of the exemptions granted to companies referred to in paragraph 1 or authorised by the Commission in accordance with Article 4(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate as imposed by paragraph 1 shall apply.

Article 3

1. The definitive anti-dumping duty as set out in Article 1, paragraph 2, is hereby extended to 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 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, and currently falling under CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 43 (TARIC code 2710 19 43 30), ex 2710 19 46 (TARIC code 2710 19 46 30), ex 2710 19 47 (TARIC code 2710 19 47 30), ex 2710 20 11 (TARIC code 2710 20 11 30), ex 2710 20 16 (TARIC code 2710 20 16 30), ex 3824 99 92 (TARIC code 3824 99 92 20) and ex 3826 00 90 (TARIC code 3826 00 90 30).

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. The application of the individual duty rate specified for the companies referred to in Article 1, paragraph 2, shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex III. If no such invoice is presented, the duty rate applicable under Article 1(2) to 'all other companies' shall apply.

Article 4

1. Requests for exemption from the duty extended by Article 2(1) and Article 3(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G
Rue de la Loi 170, CHAR 04/034
1049 Brussels
BELGIUM

Email: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Article 1, from the duty extended by Article 2(1) and Article 3(1).

Article 5

In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ⁽²²⁾, the amount of anti-dumping duty laid down in Articles 1, 2 and 3 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 6

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽²²⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

ANNEX I

Company Name	City	TARIC additional code
AG Processing Inc.	Omaha	A942
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
American Made Fuels, Inc.	Canton	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels LLC	Tulsa	A940
ED&F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels Inc.	Madison	A940
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel LP (BioSelect Fuels)	Houston	A940
Geo Green Fuels LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries Inc.	Cold Spring	A940

Company Name	City	TARIC additional code
High Plains Bioenergy	Guymon	A940
Huish Detergents Inc.	Salt Lake City	A940
Incobrasa Industries Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels Inc.	Newark	A940
Iowa Renewable Energy LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries LLC	Claypool	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Memphis Biofuels, LLC	Memphis	A942
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels Ltd.	Houston	A940
Organic Technologies	Coshocton	C482
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940

Company Name	City	TARIC additional code
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Scott Petroleum	Itta Bena	A942
Seminole Biodiesel	Bainbridge	A940
Soy Solutions	Milford	A940
SoyMor Biodiesel LLC	Albert Lea	A940
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940
U.S. Biofuels Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vinmar Overseas, Ltd	Houston	A938
Vitol Inc.	Houston	A940
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel LLC	Farley	A940
Western Iowa Energy LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940

ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3) and Article 2(2):

- the name and function of the official of the entity issuing the commercial invoice,
- the following declaration:

'I, the undersigned, certify that the (volume) 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 sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [countr[y]ies concerned]. I declare that the information provided in this invoice is complete and correct.'

ANNEX III

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 3(2):

- the name and function of the official of the entity issuing the commercial invoice,
- the following declaration:

'I, the undersigned, certify that the (volume) 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 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in the United States of America. I declare that the information provided in this invoice is complete and correct.'

SE RESUELVE:

Artículo 1.- Se deja constancia que habiendo transcurrido el plazo legal para impugnar la Resolución N° 2872-2024/CSD-INDECOPI, de fecha 29 de octubre de 2024, que declaró FUNDADA la acción de cancelación -iniciada de oficio- de la autorización de funcionamiento de la ASOCIACIÓN NACIONAL DE PRODUCTORES DE PISCO como Consejo Regulador de la denominación de origen Pisco, dicho acto administrativo ha quedado CONSENTIDO.

Artículo 2.- En tal sentido, se deja constancia que -por disposición de la citada resolución- la decisión de CANCELAR la autorización de funcionamiento del señalado Consejo Regulador se encuentra FIRME, siendo que, sobre esta resolución no cabe interponer recurso alguno, en tanto se limita a dar cuenta del vencimiento del plazo legal para recurrir la Resolución en referencia, la que por transcurso del tiempo ha adquirido la condición de consentida y firme.

Artículo 3.- Por su parte, en observancia de la formalidad establecida en el último párrafo del artículo 27 de la Ley N° 28331, Ley Marco de los Consejos Reguladores de denominaciones de origen, PUBLIQUESE la presente resolución en la separata de Normas Legales del Diario Oficial “El Peruano”.

Regístrese, comuníquese y publíquese.

RONALD GASTELLO ZÁRATE
Secretario Técnico de la Comisión
de Signos Distintivos INDECOPI

2367854-1

Disponen inicio de procedimiento de examen por expiración de medidas (“sunset review”) a derechos antidumping definitivos impuestos por la Res. N° 116-2010/CFD-INDECOPI y prorrogados por las RR. N° 218-2016/CDB-INDECOPI y 197-2020/CDB-INDECOPI

RESOLUCIÓN N° 008-2025/CDB-INDECOPI

Lima, 21 de enero de 2025

LA COMISIÓN DE DUMPING, SUBSIDIOS Y ELIMINACIÓN DE BARRERAS COMERCIALES NO ARANCELARIAS DEL INDECOPI

SUMILLA: En mérito a la solicitud presentada por Heaven Petroleum Operators S.A. y Axxion Green Energy S.A., para que se disponga el inicio de un procedimiento de examen por expiración de medidas (“sunset review”) con relación a los derechos antidumping vigentes sobre las importaciones de biodiésel puro (B100) y de las mezclas que contengan una proporción mayor al 50% de biodiésel (B50) en su composición, originario de los Estados Unidos de América, la Comisión ha dispuesto dar inicio al referido procedimiento de examen, al haber verificado el cumplimiento de los requisitos establecidos a tal efecto en el artículo 11.3 del Acuerdo Antidumping de la Organización Mundial del Comercio (OMC) y el artículo 60 del Reglamento Antidumping. De acuerdo a la información disponible en esta etapa de evaluación inicial del procedimiento administrativo, se han encontrado indicios razonables que indican la probabilidad de continuación o repetición del dumping y del daño a la producción nacional, en caso se supriman los derechos antidumping antes mencionados.

Visto, el Expediente N° 027-2024/CDB, y;

CONSIDERANDO:

I. ANTECEDENTES

Por Resolución N° 197-2020/CDB-INDECOPI publicada en el diario oficial “El Peruano” el 25 de

diciembre de 2020, la Comisión de Dumping, Subsidios y Eliminación de Barreras Comerciales No Arancelarias del Indecopi (en adelante, la Comisión) dispuso mantener vigentes, por un periodo adicional de cinco (05) años, los derechos antidumping impuestos por Resolución N° 116-2010/CFD-INDECOPI y prorrogados por Resolución N° 218-2016/CDB-INDECOPI, sobre las importaciones de biodiésel puro (B100) y de las mezclas que contengan una proporción mayor al 50% de biodiésel (B50) en su composición (en adelante, biodiésel)¹, originario de los Estados Unidos de América (en adelante, los Estados Unidos).

Mediante escrito de fecha 24 de octubre de 2024, Heaven Petroleum Operators S.A. (en adelante, Heaven Petroleum) y Axxion Green Energy S.A. (en adelante, Axxion Green), presentaron una solicitud para que se disponga el inicio de un procedimiento de examen por expiración de medidas (“sunset review”) a los derechos antidumping impuestos sobre las importaciones de biodiésel originario de los Estados Unidos, con la finalidad de que se mantengan vigentes por un periodo adicional y no sean suprimidos al cumplirse el quinto año desde su última revisión, según lo establecido en los artículos 48 y 60 del Decreto Supremo N° 006-2003-PCM, modificado por los Decretos Supremos N° 004-2009-PCM y 136-2020-PCM (en adelante, Reglamento Antidumping)², que recogen lo dispuesto en el artículo 11.3 del Acuerdo Relativo a la Aplicación del Artículo VI del Acuerdo General Sobre Aranceles Aduaneros y Comercio de 1994 (en adelante, el Acuerdo Antidumping)³ de la Organización Mundial del Comercio (en adelante, OMC).

II. ANÁLISIS

Conforme a lo indicado en el Informe N° 007-2025/CDB-INDECOPI elaborado por la Secretaría Técnica (en adelante, el Informe), la solicitud de inicio de examen por expiración de medidas presentada por los solicitantes reúne los requisitos establecidos en la normativa vigente para que sea admitida a trámite. Ello, considerando que los productores solicitantes han presentado su solicitud dentro del plazo previsto en el artículo 60 del Reglamento Antidumping⁴ y que cuentan con legitimidad para presentar dicha solicitud en nombre de la rama de la producción nacional, según lo establecido en la citada norma y en los artículos 5.4⁵ y 11.3⁶ del Acuerdo Antidumping.

Para disponer el inicio de un procedimiento de examen por expiración de medidas, la autoridad debe determinar, en función a la información y las pruebas disponibles, si existen indicios razonables que sustenten la probabilidad de que tanto el dumping como el daño continúen o se repitan si los derechos son suprimidos. En ese sentido, es necesario que la autoridad efectúe un análisis prospectivo que le permita inferir que ambos elementos -es decir, el dumping y el daño- podrían presentarse de manera concurrente en caso se disponga la supresión de las medidas respectivas.

El análisis de la solicitud de inicio de procedimiento de examen presentada por los solicitantes toma en consideración el periodo enero de 2021 - junio de 2024 para evaluar la probabilidad de continuación o repetición del dumping, así como la probabilidad de continuación o repetición del daño.

En el presente caso, de acuerdo a la información disponible en esta etapa de evaluación inicial del procedimiento administrativo correspondiente al periodo de análisis (enero de 2021 - junio de 2024), se han encontrado indicios razonables que permiten inferir que es probable que la práctica de dumping continúe o se repita, en caso los derechos antidumping actualmente vigentes sean suprimidos. Esta conclusión se sustenta en las consideraciones contenidas en el Informe, cuyos principales elementos se exponen a continuación:

(i) Durante el periodo de análisis (enero de 2021 - junio de 2024), no se registraron importaciones de biodiésel originario de los Estados Unidos. Asimismo, se observa que, durante el referido periodo, Indonesia se posicionó como el principal proveedor extranjero de biodiésel en el Perú, seguido de China y la Unión Europea, los cuales

representaron en conjunto el 92.8% de las importaciones totales de biodiésel.

(ii) Estados Unidos posee una amplia capacidad de exportación de biodiésel, habiéndose ubicado como el cuarto proveedor mundial de dicho producto durante el periodo enero de 2021 - junio de 2024.

Durante el periodo de análisis 2021 - 2023, las exportaciones de biodiésel estadounidense hacia el mundo experimentaron un crecimiento acumulado de 43.0%. Sin embargo, esta tendencia positiva se revirtió en el primer semestre de 2024, cuando las exportaciones de biodiésel registraron una contracción de 36.1% respecto a similar periodo del año previo.

Asimismo, durante el referido periodo, la industria estadounidense de biodiésel mantuvo una capacidad libremente disponible para la producción del producto objeto de la solicitud (en promedio, 21.1% de su capacidad instalada)⁷, la cual es mayor en ocho (8) veces el tamaño del mercado peruano de ese biocombustible⁸.

(iii) La posición que mantiene los Estados Unidos como cuarto proveedor mundial de biodiésel ha permitido que los exportadores de dicho país desarrollen estrategias de diferenciación de precios en sus envíos de biodiésel a distintos mercados de destino, observándose que, durante el periodo de análisis (enero de 2021 - junio de 2024), el precio promedio FAS⁹ de exportación más alto del producto estadounidense se ubicó 2.75 veces por encima del precio promedio FAS más bajo.

Debido a la diferencia registrada entre los precios de exportación del biodiésel originario de los Estados Unidos hacia sus distintos mercados de destino, resulta probable que, en caso se supriman los derechos antidumping vigentes, se registren importaciones de biodiésel estadounidense en niveles similares a los registrados en otros mercados de destino de las exportaciones estadounidenses en los que no se aplican medidas de defensa comercial sobre los envíos de dicho producto.

(iv) Durante el periodo de análisis (enero de 2021 - junio de 2024), en el marco de un procedimiento de examen por expiración de medidas, la Unión Europea y el Reino Unido han mantenido vigentes los derechos antidumping aplicados sobre los envíos de biodiésel originario de los Estados Unidos, los cuales estarán vigentes hasta agosto de 2026. Ello evidencia que las autoridades de otras jurisdicciones han identificado que empresas exportadoras estadounidenses del producto materia de la solicitud recurren a prácticas de dumping en sus envíos a diversos mercados extranjeros.

Asimismo, considerando la información de la que se dispone en esta etapa del procedimiento administrativo correspondiente al periodo de análisis (enero de 2021 - junio de 2024), se han encontrado indicios razonables que permiten inferir que es probable que el daño a la producción nacional continúe o se repita, en caso se supriman los derechos antidumping vigentes sobre las importaciones de biodiésel originario de los Estados Unidos. Esta conclusión se sustenta en las consideraciones contenidas en el Informe, cuyos principales elementos se exponen a continuación:

(i) Durante el periodo de análisis (enero de 2021 - junio de 2024), los principales indicadores económicos de Heaven Petroleum y Axxion Green (como la producción, las ventas internas, la participación de mercado y la tasa de uso de la capacidad instalada) mostraron un comportamiento mixto, aunque en la parte final y más reciente de dicho periodo (primer semestre de 2024), los indicadores en mención reportaron niveles ligeramente inferiores al nivel promedio registrado en el resto de los semestres que conforman el periodo de análisis.

En el caso de las ventas internas, se ha apreciado que si bien aquellas se mantuvieron prácticamente estables durante el periodo de análisis (registraron un aumento de 1.8%), en dicho periodo la demanda interna experimentó un aumento mayor (4.6%), lo que generó que la participación de mercado de los productores solicitantes se reduzca durante el periodo de análisis (en 1.3 puntos porcentuales).

Se ha podido observar también que, a lo largo del periodo de análisis, los productores solicitantes

registraron márgenes de beneficios negativos, debido a que el precio promedio de venta interna de biodiésel de los productores solicitantes, que se ubicó en un nivel similar al precio de las importaciones que ingresaron al mercado peruano durante dicho periodo (Indonesia, China y Unión Europea), no cubrió los costos de producción incurridos por tales productores para la fabricación de biodiésel.

De este modo, en esta etapa inicial del procedimiento, el análisis de la evolución de los principales indicadores económicos y financieros de Heaven Petroleum y Axxion Green correspondiente al periodo de análisis (enero de 2021 - junio de 2024), permite inferir que tales empresas mantienen una situación de vulnerabilidad que podría agudizarse en caso se produzca el ingreso de volúmenes significativos de biodiésel estadounidense a posibles precios dumping.

(ii) Se ha estimado que, en caso se supriman los derechos antidumping vigentes, las importaciones de biodiésel originario de los Estados Unidos ingresarían al mercado peruano registrando un precio promedio menor al precio promedio de venta interna de Heaven Petroleum y Axxion Green Energy¹⁰, el cual se ubicó por debajo de su costo de producción. Así, se ha estimado que, durante el periodo de análisis, el precio al que hubiese ingresado al Perú el producto objeto de la solicitud sin considerar el pago de derechos antidumping (precio hipotético) se habría ubicado, en promedio, 29.2% por debajo del precio promedio de venta interna de las empresas solicitantes, y en un nivel inferior al precio promedio nacionalizado de las importaciones de biodiésel originarias de Indonesia, China y la Unión Europea, principales países proveedores del mercado peruano (en promedio, 26.2%, 34.9% y 35.1%, respectivamente).

(iii) De igual manera, de suprimirse las medidas antidumping vigentes, sería posible que se produzca nuevamente el ingreso al mercado nacional de importaciones de biodiésel estadounidense a presuntos precios dumping, tomando en consideración que: (i) Estados Unidos es el cuarto exportador mundial de biodiésel; (ii) la industria estadounidense de biodiésel cuenta con una amplia capacidad libremente disponible que le permitiría cubrir la totalidad de la demanda nacional; (iii) las autoridades de otras jurisdicciones han determinado que las empresas exportadoras estadounidenses recurren a prácticas de dumping en sus envíos de biodiésel; y, (iv) las importaciones de biodiésel estadounidense podrían ingresar al Perú registrando precios menores a los precios de venta interna de los productores solicitantes y de los principales proveedores del mercado peruano (Indonesia, China y la Unión Europea).

Lo señalado anteriormente permite inferir, de manera inicial, que, en caso se supriman los derechos antidumping vigentes, se podría propiciar el ingreso de importaciones de biodiésel de origen estadounidense a precios que se ubicarían en niveles inferiores al precio promedio del producto nacional registrado en el periodo de análisis, el cual se mantuvo por debajo de los costos de producción del producto objeto de solicitud. Ello, incentivaría una mayor demanda de biodiésel estadounidense en detrimento de las ventas internas de los solicitantes, lo que podría afectar sustantivamente el desempeño de los productores solicitantes, generando efectos desfavorables en sus principales indicadores económicos.

Por tanto, habiéndose encontrado indicios que demuestran de manera inicial que el dumping y el daño sobre las empresas solicitantes podrían continuar o repetirse en caso se supriman las medidas vigentes sobre las importaciones de biodiésel originario de los Estados Unidos, corresponde disponer el inicio del procedimiento de examen por expiración de medidas a los derechos antidumping impuestos sobre las importaciones antes mencionadas, a fin de establecer, al término del procedimiento, si es necesario mantener o suprimir los citados derechos.

Asimismo, a la luz del análisis efectuado, a fin de evitar que la producción nacional de biodiésel pueda experimentar un daño importante debido al ingreso de importaciones del producto objeto de la solicitud de origen estadounidense a posibles precios dumping, resulta necesario que los derechos antidumping sobre

tales importaciones continúen siendo aplicados mientras dure el procedimiento de examen, de conformidad con el artículo 11.3 del Acuerdo Antidumping.

El presente acto se encuentra motivado, asimismo, por los fundamentos del análisis y las conclusiones del Informe, que desarrolla detalladamente los puntos señalados anteriormente; y que forma parte integrante de la presente Resolución, de acuerdo a lo establecido en el artículo 6.2 del Texto Único Ordenado de la Ley N° 27444, Ley del Procedimiento Administrativo General.

De conformidad con el Acuerdo Antidumping, el Reglamento Antidumping, el Decreto Legislativo N° 1033; y,

Estando a lo acordado en su sesión del 21 de enero de 2025;

SE RESUELVE:

Artículo 1°.- Disponer, a solicitud de parte interesada, el inicio de un procedimiento de examen por expiración de medidas ("sunset review") a los derechos antidumping definitivos impuestos por Resolución N° 116-2010/CFD-INDECOPI y prorrogados por Resoluciones N° 218-2016/CDB-INDECOPI y 197-2020/CDB-INDECOPI, sobre las importaciones de biodiésel puro (B100) y de las mezclas que contengan una proporción mayor al 50% de biodiésel (B50) en su composición, originario de los Estados Unidos de América.

Artículo 2°.- Notificar la presente Resolución a Heaven Petroleum Operators S.A. y Axxion Green Energy S.A., conjuntamente con el Informe N° 007-2025/CDB-INDECOPI, y dar a conocer el inicio del procedimiento de examen a las autoridades de los Estados Unidos de América, invitando a apersonarse al procedimiento a todas aquellas personas naturales y jurídicas que tengan legítimo interés en el procedimiento de examen.

Toda comunicación formulada por las partes interesadas deberá ser remitida a través de la mesa de partes virtual del Indecopi, la cual se encuentra disponible en el portal web de la institución (<https://www.indecopi.gob.pe/en/mesadepartes>). De manera alternativa, podrán dirigirse las comunicaciones a la siguiente dirección del Indecopi:

Comisión de Dumping, Subsidios y Eliminación de Barreras Comerciales No Arancelarias - Indecopi
Calle De La Prosa N° 104, San Borja
Lima 41, Perú
Teléfono: (51-1) 2247800 (anexo 3001)

Correo electrónico: dumping@indecopi.gob.pe (los documentos que sean remitidos a través del citado correo electrónico no deben exceder los 30 Megabytes - MB, pues ese es el tamaño máximo de recepción del servidor del correo electrónico en mención)

Artículo 3°.- Disponer que los derechos antidumping definitivos impuestos por Resolución N° 116-2010/CFD-INDECOPI y prorrogados por Resoluciones N° 218-2016/CDB-INDECOPI y 197-2020/CDB-INDECOPI, sobre las importaciones de biodiésel puro (B100) y de las mezclas que contengan una proporción mayor al 50% de biodiésel (B50) en su composición, originario de los Estados Unidos de América, sigan aplicándose mientras dure el procedimiento de examen, según lo estipulado en el artículo 11.3 del Acuerdo Antidumping.

Artículo 4°.- Publicar la presente Resolución en el diario oficial "El Peruano" por una (1) vez, conforme a lo dispuesto en el artículo 33 del Decreto Supremo N° 006-2003-PCM, modificado por los Decretos Supremos N° 004-2009-PCM y 136-2020-PCM.

Artículo 5°.- Publicar el Informe N° 007-2025/CDB-INDECOPI en el portal institucional del Indecopi (<https://www.indecopi.gob.pe>), conforme a lo dispuesto en el artículo 33 del Decreto Supremo N° 006-2003-PCM, modificado por los Decretos Supremos N° 004-2009-PCM y 136-2020-PCM.

Artículo 6°.- Poner en conocimiento de las partes interesadas que el periodo para que presenten pruebas o alegatos es de seis (6) meses posteriores a la publicación de la presente Resolución en el diario oficial "El Peruano", de acuerdo a lo establecido en el artículo

28 del Decreto Supremo N° 006-2003-PCM, modificado por los Decretos Supremos N° 004-2009-PCM y 136-2020-PCM. Dicho periodo podrá ser prorrogado por tres (3) meses adicionales, de conformidad con lo dispuesto en el referido artículo.

Artículo 7°.- El inicio del procedimiento de examen se computará a partir de la fecha de publicación de la presente Resolución en el diario oficial "El Peruano".

Con la intervención de los señores miembros de Comisión: Gonzalo Martín Paredes Angulo, Humberto Ángel Zúñiga Schroder, Manuel Augusto Carrillo Barnuevo y Carlos Gustavo Carrillo Mora.

GONZALO MARTÍN PAREDES ANGULO
Presidente
Comisión de Dumping, Subsidios
y Eliminación de Barreras Comerciales
No Arancelarias

¹ Dicho producto ingresa al mercado peruano, de manera referencial, a través de la subpartida arancelaria 3826.00.00.00.

² **REGLAMENTO ANTIDUMPING, Artículo 48.- Vigencia de los derechos antidumping o compensatorios.** - El derecho antidumping o compensatorio permanecerá vigente durante el tiempo que subsistan las causas del daño o amenaza de éste que los motivaron, el mismo que no podrá exceder de cinco (5) años, salvo que se haya iniciado un procedimiento conforme a lo dispuesto en el artículo 60 de este Reglamento.

Artículo 60.- Procedimiento de examen por expiración de medidas antidumping ("sunset review").-

60.1. Se puede iniciar un procedimiento de examen por expiración de medidas antidumping o compensatorias antes de que concluya el plazo previsto en el artículo 48 del presente Reglamento; o, antes de que venza el plazo previsto en el último examen realizado de conformidad con este párrafo.

60.2. Un examen en virtud del presente párrafo se inicia previa solicitud escrita presentada por la rama de producción nacional o en su nombre. Dicha solicitud se presenta con una antelación no menor a ocho (8) meses de la fecha de expiración de las medidas, contener información que esté razonablemente a disposición del solicitante y explicar por qué, a juicio del solicitante, es probable que el dumping o la subvención y el daño continúen o se repitan si el derecho se suprime. La solicitud debe contener, en particular, información sobre la evolución de la situación de la rama de producción nacional desde la imposición del derecho antidumping o compensatorio, la situación actual de la rama de producción nacional y la posible repercusión que cualquier continuación o repetición del dumping o la subvención pudiera tener en ella si el derecho se suprimiera. La solicitud se presenta acompañada del "Cuestionario para el inicio del procedimiento de examen por expiración de medidas ("sunset review")", debidamente absoluto, el cual es de acceso público en el Portal Institucional del INDECOPI. Para facilitar el procesamiento de los datos, la información económica, contable y financiera que se adjunte a la solicitud se presenta en formato digital.

Al evaluar la solicitud, la Comisión debe tener en cuenta que existan elementos de prueba suficientes que ameriten el examen de los derechos impuestos. En cualquier caso, sólo puede iniciarse un examen si la Comisión determina, basándose en un examen del grado de apoyo o de oposición a la solicitud expresado por los productores nacionales del producto similar, que la solicitud ha sido hecha "por o en nombre" de la rama de producción nacional.

³ **ACUERDO ANTIDUMPING, Artículo 11.- Duración y examen de los derechos antidumping y de los compromisos relativos a los precios.-** (...)

11.3. No obstante lo dispuesto en los párrafos 1 y 2, todo derecho antidumping definitivo será suprimido, a más tardar, en un plazo de cinco años contados desde la fecha de su imposición (o desde la fecha del último examen, realizado de conformidad con el párrafo 2, si ese examen hubiera abarcado tanto el dumping como el daño, o del último realizado en virtud del presente párrafo), salvo que las autoridades, en un examen iniciado antes de esa fecha por propia iniciativa o a raíz de una petición debidamente fundamentada hecha por o en nombre de la rama de producción nacional con una antelación prudencial a dicha fecha, determinen que la supresión del derecho daría lugar a la continuación o la repetición del daño y del dumping. El derecho podrá seguir aplicándose a la espera del resultado del examen.

⁴ Ver nota a pie de página N° 2.

⁵ **ACUERDO ANTIDUMPING, Artículo 5.- Iniciación y procedimiento de la investigación.-** (...)



5.4. No se iniciará una investigación de conformidad con el párrafo 1 si las autoridades no han determinado, basándose en el examen del grado de apoyo o de oposición a la solicitud expresado por los productores nacionales del producto similar, que la solicitud ha sido hecha por o en nombre de la rama de producción nacional. La solicitud se considerará hecha "por la rama de producción nacional o en nombre de ella" cuando esté apoyada por productores nacionales cuya producción conjunta represente más del 50 por ciento de la producción total del producto similar producido por la parte de la rama de producción nacional que manifieste su apoyo o su oposición a la solicitud. No obstante, no se iniciará ninguna investigación cuando los productores nacionales que apoyen expresamente la solicitud representen menos del 25 por ciento de la producción total del producto similar producido por la rama de producción nacional. [Notas al pie de página omitidas].

⁶ Ver nota a pie de página N° 3.

⁷ Se aprecia que en el periodo enero de 2021 - diciembre de 2023, la capacidad instalada de producción y la producción de biodiésel en los Estados Unidos se contrajeron 7.7% y 0.7%, respectivamente. Además, en el primer semestre de 2024, los indicadores antes referidos se mantuvieron prácticamente estables (reducción de 3.4%, respectivamente) respecto a similar periodo del año previo.

⁸ Conforme se explica en el Informe, el tamaño del mercado peruano de biodiésel ha sido calculado a través de la suma de las importaciones totales de biodiésel y de las ventas internas de los productores nacionales identificados en esta etapa de evaluación inicial (Heaven Petroleum, Axxion Green y Nordtraube Perú S.A.C.)

⁹ Franco a bordo del Buque, FAS por sus siglas en inglés *Free Alongside Ship*: Bajo el incoterm FAS, el vendedor entrega las mercancías al lado del buque en el puerto de embarque acordado, siendo que el vendedor es responsable de todos los costos y los riesgos solo hasta que las mercancías hayan quedado situadas en este lugar. A partir de ese punto, el comprador se encarga de los costos y los riesgos. Disponible en <https://santandertrade.com/es/portal/analizar-mercados/incoterms> (última consulta: 07 de enero de 2025).

¹⁰ Cabe precisar que, durante el periodo enero de 2021 - junio de 2024, el precio promedio de venta interna del biodiésel fabricado por los productores solicitantes se ubicó por debajo del costo de producción del referido producto.

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INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA

Crean la Unidad Funcional denominada Laboratorio Estadístico LabStat dependiente de la Escuela Nacional de Estadística e Informática

RESOLUCIÓN JEFATURAL N° 029-2025-INEI

Lima, 31 de enero de 2025

Visto el informe N° 000001-2025-INEI/ENEI de la Escuela Nacional de Estadística e Informática - ENEI; Oficio N° 000402-2025-INEI/OTPP de la Oficina Técnica de Planificación, Presupuesto y Cooperación Técnica y el Informe N° 000006-2025-INEI/OTAJ de la Oficina Técnica de Asesoría Jurídica del Instituto Nacional de Estadística e Informática.

CONSIDERANDO:

Que, el Instituto Nacional de Estadística e Informática (INEI), de conformidad con el artículo 8 del Decreto Legislativo N° 604, Ley de Organización y Funciones del Instituto Nacional de Estadística e Informática, es el organismo central y rector del Sistema Nacional de Estadística, responsable de normar, planear, dirigir, coordinar y supervisar las actividades de estadística oficiales del país;

Que, de acuerdo con el artículo 10 del Decreto Legislativo N° 604, Ley de Organización y Funciones del INEI, dentro de la estructura del INEI se encuentra la Escuela Nacional de Estadística e Informática, como órgano desconcentrado del INEI;

Que el artículo 66 del Reglamento de Organización y Funciones del INEI, aprobado por Decreto Supremo N° 043-2001-PCM, establece que la Escuela Nacional de Estadística e Informática (ENEI) es un órgano desconcentrado del INEI, responsable de promover, orientar, desarrollar y coordinar las acciones de capacitación e investigación en los campos de la Estadística e Informática y áreas afines. Desarrolla, actividades académicas de formación técnica y capacitación especializada. En el nivel departamental cuenta con Filiales Departamentales. Asimismo, en el literal d) del citado artículo se establece como una de las funciones de la ENEI, promover el desarrollo de investigaciones de carácter científico y de la difusión de información científica sobre estadística e informática..

Que, la Décima Disposición Complementaria Final de los Lineamientos de Organización del Estado, aprobados por el Decreto Supremo N° 054-2018-PCM y su modificatoria, señala que, excepcionalmente, un órgano o unidad orgánica de una entidad pública puede conformar una unidad funcional en su interior siempre que el volumen de operaciones o recursos que gestione para cumplir con sus funciones de línea o administración interna así lo justifique, de modo tal de diferenciar las líneas jerárquicas, y alcances de responsabilidad;

Que, dicha unidad funcional no constituye una unidad de organización sino un equipo de trabajo al interior del órgano o unidad orgánica dentro del cual se constituye. Este equipo de trabajo, dada su excepcionalidad, se formaliza mediante resolución de la máxima autoridad administrativa, previa opinión favorable de la Oficina de Planeamiento y Presupuesto o la que haga sus veces. Dicha resolución se publica en el Portal de Transparencia Estándar de la entidad, en el ítem "Planeamiento y Organización", bajo responsabilidad del funcionario a cargo de dicho portal;

Que, asimismo, la unidad funcional no aparece en el organigrama, ni su conformación supone la creación de cargos ni asignación de nuevos recursos. Las líneas jerárquicas, responsabilidades y coordinador a cargo de la unidad funcional se establecen en la resolución que la formaliza y, la responsabilidad por las funciones asignadas al órgano o unidad orgánica, incluidas las encomendadas a la unidad funcional, recae en el jefe o el que haga sus veces, de dicho órgano o unidad orgánica, sin perjuicio de la responsabilidad del coordinador de la unidad funcional;

Que, en ese marco mediante Informe N° 000001-2025-INEI/ENEI, la Escuela Nacional de Estadística e Informática informa a la Jefatura del INEI que lo productores de estadísticas oficiales enfrentan un panorama que cambia rápidamente por el volumen y variedad de datos digitales, así como una demanda de información cada vez más compleja, que exigen estadísticas más oportunas y desglosadas al menor nivel geográfico, obligando a adoptar nuevas fuentes de datos, como datos administrativos y big data, lo que plantea desafíos en los métodos de análisis, el acceso a los datos, la ética y la privacidad, entre otros, por lo que la ENEI sustenta y justifica la necesidad de contar con una unidad funcional denominada Laboratorio Estadístico (LabStat), con la finalidad de implementar metodologías ágiles que permitan descubrir, experimentar y proponer nuevas metodologías ágiles que permitan descubrir, experimentar y proponer nuevas soluciones en tiempo record. Y, sobre todo, sin interferir en los procesos normales de producción de la entidad;

Que, mediante Oficio N° 000402-2025-INEI/OTPP la Oficina Técnica de Planificación, Presupuesto y Cooperación Técnica emite opinión técnica favorable sobre la creación de la Unidad Funcional "Laboratorio Estadístico (LabStat)", en la Escuela Nacional de Estadística e Informática, cuya propuesta se ha formulado en el marco de las funciones de la ENEI establecidas en el Reglamento de Organización y Funciones del INEI;

Que, con Informe N° 000006-2025-INEI/OTAJ la Oficina Técnica de Asesoría Jurídica emite opinión legal, señalando que es viable se emita la Resolución Jefatural para la creación de una unidad funcional denominado Laboratorio Estadístico (LabStat) en la Escuela Nacional de Estadística e Informática del Instituto Nacional de