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:

1. PROCEDURE

1.1. Existing measures

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

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

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

1.2. Request

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

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

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

[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 91, ex 1518 00 99, ex 2710 19 41, 3824 90 91, ex 3824 90 97, and originating in the USA.

(17) The product forming the object of the circumvention investigation is twofold. Firstly, regarding the allegations of transhipment through Canada and Singapore, it is identical to the product at issue in the original investigation, as described in the previous paragraph. Regarding shipments directly from the USA, the product under investigation is biodiesel in a blend containing by weight 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, originating in the USA.

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

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

Imports of biodiesel and certain biodiesel blends into the European Union

under CN code 3824 90 91 (in tonnes)

	2008	share	2009	share	IP	share
USA	1 487 790	83,62 %	381 227	22,29 %	24	0,00 %
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 transhipment 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 transhipment 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 transhipment, 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 transhipment 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 transhipment 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.