

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.'
