COMMISSION IMPLEMENTING REGULATION (EU) 2023/1637

of 16 August 2023

initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2019/2092 on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, and making such imports subject to registration

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union [1] ('the basic Regulation') and in particular Articles 23(4) and 24(5) thereof,

After having informed the Member States,

Whereas:

A. **REQUEST**

(1) The European Commission ('the Commission') has received a request pursuant to Articles 23(4) and 24(5) of the basic Regulation, to investigate the possible circumvention of the countervailing measures imposed on imports of biodiesel originating in Indonesia and to make imports of biodiesel consigned from the People's Republic of China ('PRC') and the United Kingdom ('UK'), whether declared as originating in the People's Republic of China and the United Kingdom or not, subject to registration.

(2) The request was lodged on 4 July 2023 by the European Biodiesel Board.

B. **PRODUCT**

(3) The product concerned by the possible circumvention is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, classified on the date of entry into force of Commission Implementing Regulation (EU) 2019/2092 [2] under CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 12 and 3824 99 92 20), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30) and originating in Indonesia ('the product concerned'). This is the product to which the measures that are currently in force apply.

[1] OJ L 176, 30.6.2016, p. 55.

[2] Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia (OJ L 317, 9.12.2019, p. 42).

(4) The product under investigation is the same as that defined in the previous recital, currently falling under CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 16, ex 3824 99 92, 3826 00 10 and ex 3826 00 90, but consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not (TARIC codes 1516 20 98 22, 1516 20 98 23, 1516 20 98 31, 1516 20 98 32, 1518 00 91 22, 1518 00 91 23, 1518 00 91 31, 1518 00 91 32, 1518 00 95 10, 1518 00 95 11, 1518 00 99 22, 1518 00 99 23, 1518 00 99 31, 1518 00 99 32, 2710 19 43 22, 2710 19 43 23, 2710 19 43 31, 2710 19 43 32, 2710 19 46 22, 2710 19 46 23, 2710 19 46 31, 2710 19 46 32, 2710 19 47 22, 2710 19 47 23, 2710 19 47 31, 2710 19 47 32, 2710 20 11 22, 2710 20 11 23, 2710 20 11 31, 2710 20 11 32, 2710 20 16 22, 2710 20 16 23, 2710 20 16 31, 2710 20 16 32, 2710 20 16 91, 2710 20 16 92, 3824 99 92 11, 3824 99 92 13, 3824 99 92 15, 3824 99 92 16, 3826 00 10 21, 3826 00 10 22, 3826 00 10 51, 3826 00 10 52, 3826 00 10 90, 3826 00 10 91, 3826 00 90 12, 3826 00 90 13, 3826 00 90 31 and 3826 00 90 32) ('the product under investigation').

C. **EXISTING MEASURES**

(5) The measures currently in force and possibly being circumvented are countervailing measures imposed by Implementing Regulation (EU) 2019/2092 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia ('the existing measures').

D. **GROUNDS**

(6) The request contains sufficient evidence that the existing countervailing measures on imports of the product concerned are being circumvented by imports of the product under investigation. In particular, the evidence available to the Commission shows the following.

(7) A change in the pattern of trade involving exports from Indonesia and the People's Republic of China and the United Kingdom to the Union has taken place following the imposition of the existing countervailing measures.

(8) This change appears to stem from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty, namely the consignment of the product concerned via the People's Republic of China and the United Kingdom to the Union.

(9) Furthermore, the evidence shows that because of the practices described above the remedial effects of the existing countervailing measures on the product concerned are being undermined both in terms of quantity and prices. Significant volumes of imports of the product under investigation appear to have entered the Union market. In addition, there is sufficient evidence that imports of the product under investigation are made at injurious prices.

(10) Finally, the evidence tends to show that the product under investigation and/or parts thereof still benefit from the subsidy. Indeed, the product under investigation and the parts thereof are produced by and exported to the People's Republic of China and the United Kingdom by companies in Indonesia that were found to receive countervailable subsidies for the production and sale of the product under investigation under the existing measures.

(11) Should circumvention practices covered by Article 23 of the basic Regulation, other than the ones mentioned above, be identified in the course of the investigation, the investigation may also cover these practices.

E. **PROCEDURE**

(12) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23(4) of the basic Regulation and to make imports of the product under investigation subject to registration, in accordance with Article 24(5) of the basic Regulation.

(13) In order to obtain the information necessary for this investigation, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3(2) of this Regulation. The time limit set in Article 3(2) of this Regulation applies to all interested parties. Information, as appropriate, may also be sought from the Union industry.

(14) The authorities of the People's Republic of China, the United Kingdom and Indonesia will be notified of the initiation of the investigation.

(a) **Instructions for making written submissions and sending completed questionnaires and correspondence**

(15) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.

(16) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled '*Sensitive*' ([3]). Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

(17) Parties providing '*Sensitive*' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled *'For inspection by interested parties*'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

(18) If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

(19) Interested parties are invited to make all submissions and requests via TRON.tdi (https://webgate.ec.europa.eu/tron/TDI) including requests to be registered as interested parties, scanned powers of attorney and certification sheets.

(20) In order to have access to TRON.tdi, interested parties need an EU Login account. Full instructions on how to register and use TRON.tdi are available on https://webgate.ec.europa.eu/tron/resources/documents/gettingStarted.pdf.

By using TRON.tdi or email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: https://europa.eu/!7tHpY3.

(21) The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

([3]) A '*Sensitive*' document is a document which is considered confidential pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

(22) Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate G
Office: CHAR 04/039
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

TRON.tdi: https://webgate.ec.europa.eu/tron/tdi

Email:

— for general or PRC-related matters: TRADE-R800-BIODIESEL-CN@ec.europa.eu,

— for general or UK-related matters: TRADE-R800-BIODIESEL-UK@ec.europa.eu.

(b) **Collection of information and holding of hearings**

(23) All interested parties including the Union industry, importers and any relevant association are invited to make their views known in writing and to provide supporting evidence provided that such submissions are made within the deadline provided for in Article 3(2). Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) **Requests for exemptions**

(24) In accordance with Article 23(6) of the basic Regulation, imports of the product under investigation may be exempted from measures if the importation does not constitute circumvention.

(25) Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 23(6) of the basic Regulation, to producers of the product under investigation in the People's Republic of China and the United Kingdom that can show that they are not engaged in circumvention practices as defined in Articles 23(3) of the basic Regulation. Producers, if any, wishing to obtain an exemption should come forward within the time limit indicated in Article 3(1) of this Regulation. Copies of the exemption claim form questionnaire for exporting producers in the People's Republic of China and the United Kingdom and questionnaires for importers in the EU are available in the file for inspection by interested parties and on DG Trade's website: https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2678. The questionnaires have to be submitted within the time limit indicated in Article 3(2) of this Regulation.

F. **REGISTRATION**

(26) Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount, not exceeding the residual duty imposed by Implementing Regulation (EU) 2019/2092, can be levied from the date on which registration of such imports was imposed.

G. **TIME LIMITS**

(27) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, submit questionnaires, present their views in writing or any other information to be taken into account during the investigation,

— producers in the People's Republic of China and the United Kingdom may request exemptions from measures,

— interested parties may make a written request to be heard by the Commission.

(28) Attention is drawn to the fact that the exercise of procedural rights set out in the basic Regulation depends on parties making themselves known within the time limits laid down in Article 3 of this Regulation.

H. **NON-COOPERATION**

(29) If any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available in accordance with Article 28 of the basic Regulation.

(30) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available in accordance with Article 28 of the basic Regulation.

(31) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. **SCHEDULE OF THE INVESTIGATION**

(32) The investigation will be concluded, pursuant to Article 23(4) of the basic Regulation, within nine months of the date of entry into force of this Regulation.

J. **PROCESSING OF PERSONAL DATA**

(33) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ([4]).

(34) A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's website: https://europa.eu/!vr4g9W.

K. **HEARING OFFICER**

(35) Interested parties may request the intervention of the Hearing Officer for trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and third parties as may arise during the proceeding.

(36) The Hearing Officer may organise hearings and mediate between the interested party/-ies and Commission services to ensure that the interested parties' rights of defence are being fully exercised. A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in the due course.

(37) Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

(38) For further information and contact details interested parties may consult the Hearing Officer's web pages on DG TRADE's website: https://policy.trade.ec.europa.eu/contacts/hearing-officer_en,

([4]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is initiated pursuant to Article 23(4) of Regulation (EU) 2016/1037, in order to determine if imports into the Union of fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently classified under CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 16, ex 3824 99 92, 3826 00 10 and ex 3826 00 90, consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not (TARIC codes 1516 20 98 22, 1516 20 98 23, 1516 20 98 31, 1516 20 98 32, 1518 00 91 22, 1518 00 91 23, 1518 00 91 31, 1518 00 91 32, 1518 00 95 10, 1518 00 95 11, 1518 00 99 22, 1518 00 99 23, 1518 00 99 31, 1518 00 99 32, 2710 19 43 22, 2710 19 43 23, 2710 19 43 31, 2710 19 43 32, 2710 19 46 22, 2710 19 46 23, 2710 19 46 31, 2710 19 46 32, 2710 19 47 22, 2710 19 47 23, 2710 19 47 31, 2710 19 47 32, 2710 20 11 22, 2710 20 11 23, 2710 20 11 31, 2710 20 11 32, 2710 20 16 22, 2710 20 16 23, 2710 20 16 31, 2710 20 16 32, 2710 20 16 91, 2710 20 16 92, 3824 99 92 11, 3824 99 92 13, 3824 99 92 15, 3824 99 92 16, 3826 00 10 21, 3826 00 10 22, 3826 00 10 51, 3826 00 10 52, 3826 00 10 90, 3826 00 10 91, 3826 00 90 12, 3826 00 90 13, 3826 00 90 31 and 3826 00 90 32) are circumventing the measures imposed by Implementing Regulation (EU) 2019/2092.

Article 2

1. The customs authorities of the Member States shall, pursuant to Article 23(4) and Article 24(5) of Regulation (EU) 2016/1037, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.

2. Registration shall expire nine months following the date of entry into force of this Regulation.

Article 3

1. Interested parties must make themselves known by contacting the Commission within 15 days from the date of entry into force of this Regulation.

2. Interested parties, if their representations are to be taken into account during the investigation, must present their views in writing and submit questionnaire replies, requests for exemptions, or any other information within 37 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Interested parties may also apply to be heard by the Commission within the same 37-day time limit. For hearings pertaining to the initiation stage of the investigation the request must be submitted within 15 days of the date of entry into force of this Regulation. Any request to be heard must be made in writing and must specify the reasons for the request.

Article 4

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

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

Done at Brussels, 16 August 2023.

For the Commission
The President
Ursula VON DER LEYEN