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Proposal for a

COUNCIL IMPLEMENTING REGULATION

terminating the partial interim review concerning the anti-subsidy measures on imports of biodiesel originating in the United States of America, as extended to imports consigned from Canada, whether declared as originating in Canada or not

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation'), in the partial interim review concerning the anti-subsidy duties in force on biodiesel originating in the United States of America, as extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not.

General context

This proposal is made in the context of the implementation of the basic Regulation.

Existing provisions in the area of the proposal

A definitive anti-subsidy duty 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 ('the product under review', or 'biodiesel'), currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90 originating in the United States of America, by Regulation (EC) No 598/2009 (OJ L 179, 10.7.2009, p. 1).

By Council Implementing Regulation No 443/2011 (OJ L 122, 11.5.2011, p. 1) the definitive anti-subsidy duty on imports of biodiesel originating in the United States of America were extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not.

Consistency with other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Interested parties concerned by the proceeding were given the possibility to defend their interests during the proceeding, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 30 April 2013, the Commission initiated a partial interim review concerning the anti-subsidy duties on imports of biodiesel originating in the United States of America as extended to imports consigned from Canada, whether declared as originating in Canada or not.

The review was initiated following a substantiated request lodged by Canadian producer Ocean Nutrition Canada ('the applicant').

The applicant failed to demonstrate that it is able to produce the entire quantity of biodiesel that it has shipped to the Union since the start of the investigation period of the anti-circumvention investigation. Therefore, the review investigation should be terminated without granting the applicant an exemption from the anti-subsidy measures in force as extended.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to terminate the interim review investigation, which should be published in the *Official Journal of the European Union*.

Legal basis

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instrument: Regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation') and in particular Articles 19 and 23(6) thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) By Regulation (EC) No 598/2009⁽²⁾ the Council imposed definitive countervailing duties 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 ('the product under review', or 'biodiesel'), currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90 originating in the United States of America ('original measures in force').
- (2) By Regulation (EU) No 443/2011⁽³⁾, following an anti-circumvention investigation, the Council extended the definitive anti-subsidy duty 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 ('extended measures').

1.2. Request for a review

- (3) A request for a partial interim review pursuant to Articles 19 and 23(6) of the basic Regulation was lodged by Ocean Nutrition Canada ('the applicant'), an exporting producer from Canada ('the review request').

¹ OJ L 188, 18.7.2009, p. 93.

² OJ L 179, 10.7.2009, p. 1.

³ OJ L 122, 11.5.2011, p. 1.

- (4) The request was limited in scope to the examination of the possibility of granting an exemption from the extended measures, as far as the applicant is concerned.
- (5) In the review request the applicant claimed that it is a genuine producer of biodiesel and that it is able to produce the entire quantity of biodiesel that it has shipped to the Union since the start of the investigation period of the anti-circumvention investigation leading to the imposition of the extended measure.
- (6) The investigation period which was taken into consideration for the anti-circumvention investigation mentioned in recital (2 above, covered the period from 1 April 2009 to 30 June 2010 ('the original investigation period'). The investigation period for the present investigation covered the period from 1 April 2012 to 31 March 2013 ('the investigation period').
- (7) The applicant provided prima facie evidence that it has been established as a producer of biodiesel in Canada long before the imposition of the original measures. In addition, the applicant claimed that it is not related to any producer of biodiesel located in the United States of America.

1.3. Initiation of a partial interim review

- (8) Having determined, after consulting the Advisory Committee, that the review request contained sufficient prima facie evidence to justify the initiation of a partial interim review, by a notice published in the Official Journal of the European Union⁽⁴⁾ ('the notice of initiation'), the Commission initiated, on 30 April 2013, a partial interim review pursuant to Articles 19 and 23(6) of the basic Regulation limited to the examination of the possibility of granting an exemption from the extended measures as far as the applicant is concerned.

1.4. Interested parties

- (9) The Commission officially informed the applicant and the representatives of Canada about the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of initiation. Only the applicant came forward. No hearing has been requested.
- (10) The Commission received the questionnaire reply submitted by the applicant, which was verified on the spot at the applicant's premises in Canada.

2. FINDINGS OF THE INVESTIGATION AND TERMINATION OF THE REVIEW

- (11) The investigation established that the applicant is a genuine producer of biodiesel and that it is not related to any producer of biodiesel located in the United States of America.
- (12) As a result of the findings made during the on-the-spot visits at its premises in Canada, the applicant was requested to submit further information proving that its production capacity was sufficient in order to support its volume of sales during the investigation period.
- (13) Notwithstanding several extensions of the deadline, the applicant did not provide the requested information to the Commission.

⁴ OJ C 124, 30.4.2013, p. 10.

- (14) Furthermore, the investigation showed that after the entry into force of the extended measures, the applicant might have exported the product concerned to the Union under a CN code not subject to the measures. The applicant was invited by the Commission to justify the use of this CN code. However, it did not provide any information or any other evidence showing that these exports should be covered by the CN code not subject to the measures.
- (15) On the basis of the above, it is considered that the applicant has failed to demonstrate that it was able to produce the entire quantity of biodiesel that it has shipped to the Union since the start of the original investigation period. Notwithstanding the fact that the applicant did not provide the information requested by the Commission, it did not provide any other evidence showing that it was not involved in circumvention practices. For that reason, the review investigation should be terminated without granting the applicant an exemption from the extended measures.
- (16) Interested parties were informed of the intention to terminate the review investigation and were given the opportunity to comment. No comments which could alter the decision to terminate the review investigation were received.
- (17) It is therefore concluded that the partial interim review concerning the anti-subsidy measures on imports of biodiesel originating in the United States of America, as extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not should be terminated without amending the extended anti-subsidy measures.

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-subsidy measures on imports of biodiesel originating in the United States of America, as extended by Regulation (EU) No 443/2011 to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, initiated pursuant to Article 19 and Article 23(6) of Council Regulation (EC) No 598/2009, is hereby terminated without amending the anti-subsidy measure in force as extended.

Article 2

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,

*For the Council
The President*