

COMMISSION IMPLEMENTING REGULATION (EU) 2019/765**of 14 May 2019****repealing the anti-dumping duty on imports of bioethanol originating in the United States of America and terminating the proceedings in respect of such imports, following an expiry review pursuant to Article 11(2) of the 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,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), by Implementing Regulation (EU) No 157/2013 ⁽²⁾, the Council imposed a definitive anti-dumping duty of EUR 62,3 per metric tonne ('tonne') on imports of bioethanol originating in the United States of America ('US' or 'the country concerned'). These measures will hereinafter be referred to as 'the measures in force'.

1.2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry ⁽³⁾ of the measures in force, on 7 November 2017 the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036.
- (3) The request was lodged by ePure ('the applicant'), on behalf of producers representing more than 25 % of the total Union production of bioethanol.
- (4) The request was based on the grounds that the expiry of measures would be likely to result in the continuation and recurrence of dumping and a continuation and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (5) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 20 February 2018, by notice published in the *Official Journal of the European Union* ⁽⁴⁾ ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

1.4. Interested parties

- (6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed other known Union producers, the known exporting producers, traders/blenders and the authorities of the US, known importers, suppliers and users, as well as traders about the initiation of the investigation and invited them to participate.
- (7) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America (OJ L 49, 22.2.2013, p. 10).

⁽³⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 180, 8.6.2017, p. 37).

⁽⁴⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of bioethanol originating in the United States of America (OJ C 64, 20.2.2018, p. 7).

1.5. Sampling

- (8) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.5.1. Sampling of exporting producers and traders/blenders in the US

- (9) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers and traders/blenders in the US to provide the information specified in the Notice of Initiation. In addition, the Commission asked the relevant US authorities to identify and/or contact other exporting producers and traders/blenders, if any, that could be interested in participating in the investigation.
- (10) Eight producers of biofuels came forward. However, none of them produced the product under review.
- (11) Furthermore, three US biofuel associations came forward and were registered as interested parties.

1.5.2. Sampling of Union producers

- (12) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The sample was primarily based on production volume, but a good geographical spread as well as a representation of different groups was also achieved. The proposed sample consisted of four Union producers and the Commission invited interested parties to comment on the provisional sample.
- (13) Following the comments received, one preliminarily sampled producer was replaced due to its relationship with another preliminarily sampled producer. The four producers in the sample accounted for 25 % of the Union production of bioethanol during the review investigation period. The sample is representative of the Union industry.

1.5.3. Sampling of importers

- (14) 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.
- (15) Three unrelated importers provided the requested information and agreed to be included in the sample. On that basis, the Commission decided that sampling was not necessary.

1.6. Non-cooperation

- (16) As none of the US producers that came forward during the sampling exercise produced the product under review in the review investigation period, the Commission had to apply facts available with regard to the exporting producers, in accordance with Article 18 of the basic Regulation.
- (17) The Commission notified the US authorities of the application of Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments.
- (18) Although none of the exporting producers cooperated, the three US biofuel associations that came forward made submissions throughout the investigation. Those submissions were taken into consideration.

1.7. Replies to the questionnaire

- (19) The Commission sent questionnaires to the four sampled Union producers and the three unrelated importers that came forward.
- (20) Questionnaire replies were received from the four sampled Union producers and the three unrelated importers. Two of the three unrelated importers did not in fact import the product under review from the country considered in the review investigation period and were therefore not taken into further consideration. The questionnaire reply by the remaining unrelated importer was duly taken into account.

1.8. Verification visits

- (21) The Commission sought and verified all the information deemed necessary for a determination of likelihood of continuation or recurrence of dumping, likelihood of continuation or recurrence of injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Pannonia Ethanol Zrt., Dunaföldvár, Hungary
- CropEnergies Bioethanol GmbH, Mannheim, Germany
- Cristanol, Bazancourt, France
- Alco Bio Fuel N.V., Ghent, Belgium

Importers

- Shell Trading Rotterdam B.V., Rotterdam, the Netherlands

1.9. Further procedure

- (22) Despite the non-cooperation of the exporting producers, as explained in recitals (10) and (16) to (18), the three US biofuel associations and the complainant submitted several sets of comments regarding initiation. In view of the conclusions under chapter 3 below, these comments are not further addressed in this document.
- (23) On 1 March 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to repeal the anti-dumping duty in force ('the disclosure'). All parties were granted a period within which they could make comments on the disclosure.
- (24) On 12 March 2019, the applicant made a written submission making known its views on the Commission's findings. In summary, the applicant contested the Commission's preliminary conclusion that dumping was unlikely to recur if measures were allowed to lapse.
- (25) In view of these comments, the three US biofuel associations requested a hearing with the Commission's services which took place on 19 March 2019. Subsequent to this hearing, these associations sent additional documents to the Commission to support certain statements. On 20 March 2019, the applicant explained its views in a hearing.
- (26) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.10. Investigation period and period considered

- (27) The investigation of dumping and injury covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (28) The product under review is bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) intended for fuel uses originating in the US, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 50, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 99 92 (TARIC codes 2207 10 00 12, 2207 20 00 12, 2208 90 99 12, 2710 12 21 11, 2710 12 25 92, 2710 12 31 11, 2710 12 41 11, 2710 12 45 11, 2710 12 49 11, 2710 12 50 11, 2710 12 70 11, 2710 12 90 11, 3814 00 10 11, 3814 00 90 71, 3820 00 00 11 and 3824 99 92 66). Bioethanol can be produced from various agricultural feedstock, such as sugar cane, sugar beet, potatoes, manioc and corn. There can be minor differences in the production process between producers.

- (29) The types of bioethanol and bioethanol in blends covered by this expiry review, despite possible differences in terms of feedstock used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible minor variations in the product under review do not alter its basic definition or its characteristics.
- (30) Bioethanol destined for applications other than fuel use was not covered by the scope of the original investigation and is therefore also not covered by this expiry review.

2.2. Like product

- (31) In the original investigation, the Commission established that bioethanol manufactured by the Union industry and sold on the Union market has similar basic physical, chemical and technical characteristics when compared to bioethanol exported to the Union from the US. Despite the use of a range of different agricultural feedstock as raw material, bioethanol originating in the US is interchangeable with bioethanol produced in the Union.
- (32) The main difference between the majority of the bioethanol sold on the US market and the bioethanol sold on the Union market concerns the different standards for moisture content. US producers typically produce bioethanol with a water content of 0,5 % or more while the specifications for the Union market require a lower water content of maximum 0,3 %, measured according to the standard EN 15376, requiring additional refinement from producers of third countries in order to meet the specifications for the Union market.
- (33) The Commission did not receive any comments on the like product from the interested parties that made comments in this expiry review. Therefore, the Commission confirmed that those products are like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (34) None of the US exporting producers or traders/blenders of the product under review cooperated with the investigation. The Commission therefore used facts available, in accordance with Article 18 of the basic Regulation, to establish the likelihood of continuation or recurrence of dumping. In this regard, the Commission used statistical data (i.e. the Article 14(6) database, data of the Agricultural Marketing Resource Center ('AGMRC'), US International Trade Commission ('US ITC') statistics, and US Energy Information Administration statistics ('US EIA')), as well as the information provided by the applicant in the request for review.
- (35) The Commission notified the US authorities of the application of Article 18(1) of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments.

3.2. Likelihood of continuation of dumping in the Union should the measures be allowed to lapse

- (36) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether dumping was currently taking place and whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping.
- (37) During the period considered including the review investigation period, exports to the Union of bioethanol originating in the US were negligible. According to the 14(6) database, imports from the country concerned amounted to only 4 213,5 tonnes during the review investigation period, representing a market share of 0,1 %. The majority of this volume (that is, 99 %) was imported into one Member State during one month in what appears to be one delivery.
- (38) On the basis of that factual background, the Commission preliminarily decided that it has insufficient data to conclude that a representative amount of imports of the product under review during the review investigation period showed the continuation of dumping in the Union.
- (39) Subsequently, the Commission examined the likelihood of recurrence of dumping from the US based on facts available, in accordance with Article 18 of the basic Regulation.

3.3. Likelihood of recurrence of dumping should the measures be allowed to lapse

- (40) The Commission analysed whether there was a likelihood of recurrence of dumping should the measures lapse. When doing so, the following elements were analysed: US domestic prices, US export prices to third countries, production capacity, spare capacity, consumption and stocks of bioethanol of all producers in the US, whether or not complying with the moisture content of the Union market, and the attractiveness of the Union market.

Normal value

- (41) In the absence of cooperation from the US exporting producers of bioethanol, the normal value was based on data provided by the applicant in the request for review, in accordance with Article 18 of the basic Regulation.
- (42) The request for review was based on publicly available data of the AGMRC ⁽⁵⁾. The request for review used the bioethanol price in one of the largest bioethanol producing US states, Illinois, to establish the normal value.
- (43) For the sake of completeness, the Commission included in its calculation of the normal value the yearly average price quotation of the domestic sales price within four of the largest bioethanol-producing states in the US for which the AGMRC gave full data for the review investigation period, i.e. Iowa, Illinois, Nebraska, and South Dakota.
- (44) Furthermore, the Commission assessed the market prices of bioethanol, as quoted on the Chicago Board of Trade ('CBOT'). The average CBOT price was slightly higher than the average domestic sales price reported by AGMRC in the review investigation period.
- (45) Based on publicly available information, the Commission found that the standards for bioethanol applicable in the US differ from the standards applicable on other markets, including the three major US export markets Brazil, Canada, and Peru, in terms of the water content requirements. The US standards allowed for the highest water content as compared to the markets in Brazil, Canada, and Peru.
- (46) In the request for review, the applicant claimed that when examining potential US exports of bioethanol to the Union, the Commission should take into account additional costs of production related to decreasing the water content of bioethanol ('Union conversion premium'). As this methodology was used in the original investigation, the Commission accepted this claim.
- (47) To allow for a fair comparison in accordance with Article 2(10)(a) of the basic Regulation, the Commission adjusted the US domestic sales price based on the information provided by AGMRC and CBOT for the additional conversion costs related to decreasing the water content of bioethanol for exports. In the absence of cooperation from the US exporting producers, the Commission relied on data provided by the applicant, which estimated the Union conversion premium at EUR 12,30 per tonne. In order to take a conservative approach, the Commission applied this premium to the normal value. This normal value was used in all dumping calculations, even those using exports to markets where the standards for bioethanol allow for a higher water content in comparison to the Union standard.

Export price

- (48) Export prices during the review investigation period were established on the basis of publicly available data, i.e. US ITC statistics. In the request for review, the applicant identified Brazil, Canada, and Peru as the three major US export markets and suggested that the likelihood of recurrence of dumping should be examined based on US exports to these countries. The applicant further provided estimates for international and domestic freight, and for the Union conversion premium as further explained in recital 47. The Commission accepted this approach suggested by the applicant and assessed the prices of the US bioethanol sales on the three major US export markets during the review investigation period.
- (49) In addition, for the sake of completeness, the Commission analysed the average export price of the total US bioethanol sales to third markets, excluding the Union.

⁽⁵⁾ Available at: <https://www.agmrc.org/renewable-energy/ethanol/midwest-ethanol-cash-prices-basis-data-and-charts-for-selected-states> (last viewed 12 February 2019).

- (50) The export prices available in the US ITC statistical database were reported at free alongside ship ('FAS') level. The Commission corrected these data to ex-works level by deducting domestic transport costs in the US. In the absence of cooperation by the US exporting producers, the Commission relied on information concerning US domestic transport costs provided by the applicant.
- (51) In the absence of evidence that would suggest otherwise, the Commission considered that the US export prices to the individual export markets already included conversions costs related to decreasing the water content in bioethanol. Therefore, the Commission did not apply any adjustment for the additional costs incurred by the US exporting producers.

Comparison

- (52) The average normal value was compared with the weighted average export price from the US to the three major US exports markets, as established above, in accordance with Article 2(11) of the basic Regulation, both at ex-works level. Another comparison was made between the average normal value and the weighted average export price from the US to all third markets, excluding the Union.
- (53) In order to make a conservative assessment, the Commission used a normal value increased by the Union conversion premium as explained in recital 47 and an export price for which the Commission assumed that any conversion costs were already included and therefore, it was not necessary to adjust the export price for conversion costs.

Dumping margin using export prices to third countries during the review investigation period

- (54) To establish the dumping margin on exports to third countries, the Commission compared the normal value based both on the data from AGMRC and CBOT with export price to the three main US export markets and to all third markets excluding the Union duly adjusted to ex-works level.
- (55) The Commission determined that there was no dumping found in the review investigation period for the exports to the three main US export markets examined individually and to all third markets excluding the Union in total, neither when taking into account the AGMRC data nor the CBOT price for the calculation of the normal value.
- (56) Following the disclosure, the applicant claimed that the Commission incorrectly concluded that there was no dumping found in the review investigation period. The applicant in its comments on disclosure identified dumping on two US export markets (India and UAE) and also in relation to exports to two Member States (Spain and the United Kingdom).
- (57) With regard to the claims of the applicant concerning the US exports to the two Member States, it should be noted that the Commission analysis was based on the imports recorded in 14(6) database, which is considered to be more reliable than US export statistics for the determination of the import volumes from the US into the Union. An examination of those imports to individual Member States was not relevant for the investigation since the Union is treated as one single market, and there was no allegation or evidence of targeted dumping on the file (the imports to the Union referred to in recital 37 did not reveal to constitute a pattern of export prices which differed significantly among regions or time periods, and so did not satisfy the requirements for a targeted dumping analysis, as, in particular, over 99 % of those imports were made to a single Member State).
- (58) In any event, the imports from the US to the Union were considered negligible and non-representative in the review investigation period as set out in recitals 37 and 38.
- (59) The Commission checked the calculation carried out by the applicant in its submission after the disclosure and contrary to the applicant did not find dumping above *de minimis* level for the US exports to India but only found limited dumping above *de minimis* level of 3,1 % on the export to UAE. However, the exports to UAE represented only 3 % of total US exports of bioethanol and therefore cannot be in isolation considered representative. The Commission found that the difference in the results of these two calculations are caused by the fact that the applicant only used data from Illinois to calculate the normal value although complete data for four US states were available and by the exchange rate used. While the applicant used one annual average exchange rate to convert the export values in USD to EUR, the Commission converted the export values in individual months of the review investigation period by the respective average monthly exchange rate. At the same time, the applicant used an allowance for US domestic freight in EUR at a level as proposed in the request. Since the applicant estimated the allowances in the request in USD, the Commission converted the estimated value in USD to EUR in individual months of the review investigation period by the respective average monthly exchange rate.

- (60) Based on the finding set out in recital 59, the Commission considered that the findings of limited dumping with regard to the exports to UAE were not of such nature as to reverse the Commission's previous findings on the pricing behaviour of US producers and/or exporters on third markets. Thus the claim as set out in recital 56 must be rejected.
- (61) It must be, furthermore, noted that as explained in recital 48, the Commission examined the US exports to three top US export markets for bioethanol according to the applicant. In doing so, the Commission, in the absence of cooperation by the US exporting producers, followed the approach suggested by the applicant in its request. In this respect, the applicant did not provide any justification as to why the three US export markets indicated in its request, and examined by the Commission, no longer constitute a suitable basis for the analysis of potential dumping practices of US producers and/or exporters on third markets. Similarly, the applicant did not indicate why the four countries included in the comments on disclosure would be more representative, nor why they would be more representative than the average export prices of all US exports to third countries excluding the Union.
- (62) Following disclosure, the applicant further claimed that the Commission failed to consider the monthly analysis provided by the applicant, which reveals significant dumping margins for US exports to foreign markets.
- (63) The Commission took note of the applicant's previous submissions concerning the monthly analysis. It recalled that, pursuant to Article 6(1) of the basic Regulation, with a view to achieving a representative finding, an investigation period selected in the case of dumping, should normally not cover a period of less than six months. In the present case, the Commission had suggested an investigation period of 12 months, along its usual practice for dumping and injury determinations. On the basis of the investigation period as proposed by the Commission, an average dumping margin for the review investigation period was calculated. The Commission's analysis showed that in the review investigation period as a whole there was no dumping concerning the exports to the three markets selected by the applicant and to all third markets excluding the Union in total. These findings did not indicate the likelihood of further injurious dumping, as required by Article 11(2) of the basic Regulation, rather the opposite. The fact that dumping could be observed in some concrete months was not determinative of a different conclusion in this regard. In particular, the investigation period as a whole serves as an indicator for dumping. Since the applicant did not object to the use of 12 months for the investigation period at the Notice of Initiation stage (nor at a later stage), the Commission found no reason to change its assessment of dumping to a shorter period. In any case, the Commission noted that a period of less than six months should only be selected in exceptional circumstances. Those circumstances were not suggested to be present by the Applicant, nor did the Commission deem such circumstances to be present. Similarly, the fact that only for some export destinations dumping existed cannot either be considered as determinative of dumping practices of the US producers and/or exporters on third markets, nor can be used to infer that dumping to the Union would recur. Consequently, this claim must be rejected.

3.3.1. *Production capacity, spare capacity, consumption and stocks*

- (64) The statistics of US EIA ⁽⁶⁾ showed a production capacity of bioethanol in the US of 46,4 million tonnes in the review investigation period. This is more than ten times the size of the Union market, where consumption amounted to 4,3 million tonnes during the review investigation period.
- (65) However, the investigation found no spare capacity in the US. The statistics of US EIA showed that the US industry produced at more than 100 % (47,6 million tonnes) of their nameplate production capacity during the review investigation period.
- (66) In its request for the expiry review, the applicant provided evidence concerning the oversupply on the US market due to limited growth potential of domestic consumption. In its submission of 20 November 2018, the applicant reiterated this claim.
- (67) The Commission examined the domestic consumption and exports based on the US EIA and US ITC statistics and determined that the US producers exported only 8 % of their production volumes in the review investigation period. A vast majority of the US production of bioethanol was, therefore, consumed domestically. The US consumption amounted to 43,3 million tonnes in the review investigation period; hence, it represented 91 % of US production and 93 % of US production capacity.

⁽⁶⁾ Available at: <https://www.eia.gov/totalenergy/data/monthly/index.php#renewable> (last accessed 12 February 2019).

- (68) Stocks of bioethanol amounted to 2,9 million tonnes, representing only 6 % of the total production of bioethanol in the US in the review investigation period. Although this volume of stocks accounts for 68 % of the Union consumption during the review investigation period, the Commission considered that that volume represents a normal level necessary to avoid any disruption in the supply. The Commission based this conclusion on publicly available statistics by US EIA. Historical data showed that closing stocks represented 9 % to 12 % of total US production from 1992 to 2003 and 5 % to 7 % from 2004 to the review investigation period.
- (69) Following the disclosure, the applicant claimed that the fact that 8 % of US production of bioethanol was exported in the review investigation period constituted an evidence of oversupply which should be put into perspective with the size of the Union market, as such export volume represented 98 % of the Union consumption. At the same time, the applicant claimed that the situation of oversupply would worsen because of the limited growth potential of domestic consumption as supported by the trend of continuously increasing volumes exported from the US.
- (70) The Commission acknowledged that the US market is much larger than the Union market in terms of production, consumption, and export sales. Nevertheless, the applicant did not provide any evidence as to why the size of the US industry should indicate a likelihood of recurrence of dumping. Neither did the applicant provide evidence proving that the continuous increase of exports was driven by limited growth potential of the US domestic consumption and not by other factors, notably by growing demand for bioethanol on third country markets. In fact, the investigation showed that the consumption of fuel ethanol in the three major US export markets increased by 1,3 million tonnes, while the production in those countries grew by only 200 thousand tonnes. Moreover, the investigation showed that not only the US production and exports were growing but also the domestic consumption. In the period considered, the US production increased by 4,8 million tonnes, the exports by 1,5 million tonnes, and the domestic consumption by 3,1 million tonnes. Therefore, this claim must be rejected.
- (71) Following the disclosure, the applicant also claimed that the Commission should have examined the maximum sustainable production capacity provided by US EIA, which is 4,5 % higher than the nameplate capacity and also higher than the US production in the review investigation period. The applicant suggested that by considering the maximum sustainable production capacity as the actual production capacity of the US industry, there was a spare capacity of 0,8 million tonnes in the review investigation period.
- (72) In addition, the applicant provided news articles dated from September 2018 to January 2019 on closures of ethanol production facilities planned by several US producers to support its allegations of spare capacity in the US.
- (73) In this respect, according to the applicant, the Commission departed from its past practice, according to which when the supplementary capacity *[i]s of a significant quantity in comparison to the Union consumption during the RIP (...)* If this capacity was used to export to the Union and to compete on price with the Union producers or on price with the major imports from third countries, then there is a strong likelihood that such exports would be made at dumped prices ⁽⁷⁾.
- (74) In respect of the claims mentioned in recital 71, it must be noted that US EIA reported on nameplate capacity and maximum sustainable production capacity only in years 2011 and 2012 ⁽⁸⁾. In the following years, the reporting was limited to data on the nameplate capacity. No data concerning maximum sustainable production capacity were available for the review investigation period or the period considered. In this respect, the Commission acknowledged that nameplate capacity is not necessarily a physical production limit for many ethanol plants. By applying more efficient operating techniques, many ethanol plants can operate at levels that exceed their nameplate production capacity. This level of operation, called maximum sustainable capacity, is however inherently subjective ⁽⁹⁾ and amongst others depends on the water content the producer intends to achieve ⁽¹⁰⁾. It results from the evidence on the file that in order to achieve a low water content, as required for exports to the Union, the maximum sustainable production capacity is significantly lower than for higher water content. Therefore, the Commission considered that the historic data for maximum sustainable production capacity for 2011 and 2012, which has not been updated, does not constitute a reliable indication of the US

⁽⁷⁾ Council Implementing Regulation (EU) No 191/2014 of 24 February 2014 imposing a definitive anti-dumping duty on imports of certain manganese dioxides originating in the Republic of South Africa following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 59, 28.2.2014, p. 7).

⁽⁸⁾ Available at <https://www.eia.gov/petroleum/ethanolcapacity/index.php> (last viewed 14 March 2019).

⁽⁹⁾ Available at <https://www.eia.gov/todayinenergy/detail.php?id=31832> (last viewed 28 March 2019).

⁽¹⁰⁾ See Annex II of the post-hearing submission of the US associations of 20 March as available on the open file.

industry's ability to produce above the level already achieved during the review investigation period, which as the Commission already acknowledged were higher than the nameplate production capacity. Thus, the Commission confirmed its original finding that the evidence on the file, taken in its entirety, does not point to significant spare capacity in the US.

- (75) With regard to the potential closures of the US production facilities, the information did not concern the review investigation period or the period considered. Although the expiry review is a forward looking exercise, the investigation strictly examines what is likely to happen under the conditions prevailing during the review investigation period.
- (76) The Commission considered that the applicant's claims concerning the production capacity as described in recitals 71 to 73 were not substantiated and thus must be rejected.
- (77) Following the disclosure, the applicant claimed that the stock levels amounting to 6 % of production could not be considered as normal level to avoid disruption in the supply since the stocks of the Union producers only ranged from 1,5 % to 4 %. The applicant further underlined that the current levels of stocks are far from normal as evidenced by a news article dated February 2016 ⁽¹⁾.
- (78) With regard to stock levels, the applicant further claimed that the Commission failed to address a major concern of the Union industry, which considered that, since the US industry had been able to export at dumped prices during the original investigation period (1 October 2010 to 30 September 2011), there was no reason to consider that they would not be in a position to do so with even higher stocks.
- (79) In respect of the claim described in recital 77, the applicant did not provide any evidence that would make it possible for the Commission to conclude whether the stock levels in the US are unusually high and therefore threatening. The article quoted by the applicant dated February 2016 described an exceptional situation. Indeed, based on the data reported by US EIA, the closing stocks in January and February 2016 were the highest during the period considered when expressed a percentage of the production during the previous 12 months ending in the month for which the stocks were reported.
- (80) Concerning the claim described in recital 78, the Commission acknowledged that the stocks increased in comparison to the original investigation period in absolute values. The increase expressed as a share of production was however insignificant (from 5,6 % in the original investigation period to 6 % in the review investigation period). Moreover, stocks in the US have been stable during the last 14 years amounting to 5 to 7 % of production as explained in recital 68. As the applicant did not provide any evidence for its claim that the level of stocks in the Union could be considered more normal than the level in the US, the Commission did not have any ground to consider the US stock levels as unusually high.
- (81) Therefore, the claims concerning stocks as described in recitals 77 and 78 must be rejected.

3.3.2. *Attractiveness of the Union market*

- (82) In order to determine whether the Union market would be attractive for the US producers should the measures lapse, the Commission examined the size of the Union market and the Union market price, particularly in the light of potential trade diversion.
- (83) As explained in recital 64, the Union market is a relatively small market, especially in comparison to the US production.
- (84) Imports into the Union were limited; during the review investigation period the Union industry had a market share of 96 %.
- (85) In order to assess the attractiveness of the Union market in terms of price, the Commission compared the Union market price with the Union landed import price based on the export prices of the US exporting producers during the review investigation period on the three major US exports markets and all third export markets excluding the Union (based on the US ITC export statistics at FAS level).

⁽¹⁾ Available at <https://www.reuters.com/article/us-usa-biofuels-idUSKCN0VQ2QW> (last viewed 18 March 2019).

- (86) Because the moisture specifications in the Union market are different from the US domestic market and most other export markets, should the US producers decide to resume their exports into the Union, they would incur additional costs of production related to decreasing the water content of bioethanol as explained in recitals 45 to 47. Therefore, the Commission duly adjusted the US export prices for the Union conversion premium.
- (87) It should be, furthermore, clarified that in May 2012 the Commission published a Regulation to determine the correct tariff classification of certain goods in the Combined Nomenclature ⁽¹²⁾. Since then, some imports of the product concerned that may have been classified under other customs codes in the original investigation period, are to be classified under CN code 2207 20 00, that carries an import duty that has discouraging effect on exporters. During the review investigation period, the conventional import duty applicable to the product under review was EUR 129 per tonne or EUR 243 per tonne, depending on the customs code under which the product under review was classified. In the review investigation period, such conventional import duties represented 18 % to 34 % of the Union landed import price as constructed in recital 88 or 18 % to 36 % of the Union landed import price as constructed in recital 89.
- (88) For the US exports of the product under review to the three major US export markets and to all third export markets excluding the Union, the constructed Union landed price taking into account international transport costs, Union conversion premium, and the conventional import duty ranged from EUR 694 per tonne to EUR 719 per tonne. Even the lower Union landed price was, therefore, higher than the Union market price, which was determined at the level of EUR 655 per tonne in the review investigation period. This means that the US exporting producers would not be able to sell on the Union market at prices they normally achieved on third markets in the review investigation period.
- (89) For the sake of completeness and in order to take a conservative approach, the Commission also constructed a Union landed price disregarding the Union conversion premium since the US export prices should normally already include some conversion costs as explained in recitals 45 to 47. Following this approach, the Union landed price as mentioned in the previous recital would decrease to a level ranging from EUR 682 per tonne to EUR 707 per tonne. Thus, even without the Union conversion premium, the US exporting producers would not be able to achieve on the Union market prices for which they sold the product under review to third markets in the review investigation period.
- (90) Therefore, the Commission concluded that the US exporting producers would not be motivated by price to redirect their exports to the Union, would the measures be allowed to lapse.
- (91) The request for review referred to existing anti-dumping measures against bioethanol originating in the US in China, Peru, and Brazil and the corresponding possible risk of trade diversion towards the Union as another source of a possible recurrence of dumping.
- (92) The Commission acknowledged the potential diverting effects of bioethanol exports originating in the US that arise from the existence of these measures. That being said, as set out below, it considered that the risk of trade diversion would be limited in an overall assessment on the recurrence of dumping.
- (93) First, the anti-dumping and countervailing measures in China were imposed on distiller's dried grains, not bioethanol, and these measures were imposed well before the review investigation period. They, consequently, concern a different product, from which it cannot readily be concluded that a direct link to increasing imports of bioethanol into the Union could occur.
- (94) Next, in its submission of 5 July 2018, the applicant claimed that the Chinese authorities increased the import duty applicable to the US bioethanol from 5 % in 2016 to 30 % in 2017 with further increases to 45 % and 70 % in 2018. However, according to the WTO database of MFN and preferential tariffs ⁽¹³⁾, the import duty in China on HS subheading 2207 10 was 5 % in 2009, went up to 40 % afterwards and decreased again in 2017 to 8 %. The import tariff applicable to in China HS subheading 2207 20 was 80 % from 2006 onwards, decreased to 30 % in 2016 and remained at this level in the review investigation period. The Commission was, accordingly, not able to confirm the applicant's assertion.

⁽¹²⁾ Commission Implementing Regulation (EU) No 211/2012 of 12 March 2012 concerning the classification of certain goods in the Combined Nomenclature (OJ L 73, 13.3.2012, p. 1).

⁽¹³⁾ Available at: https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm (last accessed 13 February 2019).

- (95) In this regard, the US ITC statistics showed that exports of the product under review from the US to China have, in any case, already been absorbed by increased exports into other third countries during the last years. Therefore, the potential risk that these exports are redirected to the Union, should the measure be allowed lapse, is limited. Even if all exports of bioethanol from the US to China carried out in the review investigation period, amounting to 140 thousand tonnes at an average price of EUR 442/tonne at FAS level, were to be redirected to the Union following the increase of the import duties, they would have only accounted for 3 % of Union consumption during the review investigation period.
- (96) Second, with regard to Brazil, the request for review referred to a tariff quota put in place in August 2017, setting a 20 % tariff for imports of bioethanol above a quota of 600 million litres ⁽¹⁴⁾ (473 thousand tonnes). However, even with this tariff in place, bioethanol exports from the US to Brazil accounted for 318 million litres (251 thousand tonnes) during the last quarter of the review investigation period, reflecting more than double the quota for this quarter. The product under review was exported from the US to Brazil at an average price of EUR 522/tonne. This indicates that despite the existence of a 20 % tariff, Brazil remained attractive to US exports. Therefore, the Commission does not consider it likely that these exports would be redirected to the Union.
- (97) Third, as concerns the measures in place by Peru, assuming that the countervailing measures at the level of almost USD 48 per tonne imposed by Peru in November 2018 ⁽¹⁵⁾ would have a totally prohibitive effect on US exports of bioethanol to Peru (for which the Commission was not able to gather evidence), a redirection of these imports, which amounted to 127 thousand tonnes in the review investigation period, towards the Union would have only accounted for 3 % of Union consumption during the review investigation period. As such, even the worst case scenario for trade diversion arising from Peruvian measures could not lead to a conclusive finding on recurrence of dumping of US bioethanol.
- (98) Following the disclosure, the applicant claimed that contrary to the Commission's conclusions on the attractiveness, US bioethanol producers considered the Union market as highly attractive. The applicant based this assertion on the fact that the US industry started to renew the sustainability certification necessary to sell bioethanol on the Union market following the Renewable Energy Directive ('RED') ⁽¹⁶⁾. According to the applicant, the only reason for third country producers and traders for investing in RED certification is to enable exports to the Union. The applicant provided a list of seven US producers (Marquis Energy, Archer Daniels Midland, Green Plains, Cargill, Conestoga Energy Partners – two certificates, Plymouth Energy) that allegedly renewed their Union sustainability certification.
- (99) To support the allegations described in recital 98, the applicant quoted a news article dated August 2017 on the plans of the US producer and trader Archer Daniels Midland ('ADM') to *[re]configure its Peoria, Illinois, ethanol dry mill to produce higher-margin industrial and beverage alcohol and fuel for the export market* ⁽¹⁷⁾.
- (100) Although the applicant did not provide any evidence in respect of the Union RED sustainability certification of US producers and traders, the Commission examined this claim. In this respect, it should be noted that the Union RED sustainability certification is *de iure* voluntary, i.e. imports into the Union can also take place without it. However, any use of biofuels that were not certified would not be taken into account when measuring compliance of a Member State with the requirements of that Directive concerning national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport and when measuring its compliance with renewable energy obligations ⁽¹⁸⁾. Given that bioethanol is more expensive than ordinary fuel, there is hence no economic reason, based on the evidence on the file, for importing bioethanol that is not certified as Union RED sustainable. Therefore, the Commission concluded that there is a clear incentive to sell RED certified ethanol on the Union market, which makes the sustainability certification *de facto* necessary for exports to the Union. The Commission found that only four (Marquis Energy, Green Plains, one of Conestoga Energy Partners, Plymouth Energy) of the seven US companies

⁽¹⁴⁾ Resolution No 72 of 31 August 2017 and Ministerial Order No 32 of 4 September 2017.

⁽¹⁵⁾ Resolution No 152 of 6 November 2018.

⁽¹⁶⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

⁽¹⁷⁾ Available at <https://www.reuters.com/article/us-adm-results/adm-says-profit-tumbles-and-issues-gloomy-view-shares-drop-idUSKBN1D01EV> (last viewed 15 March 2019).

⁽¹⁸⁾ Article 17 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

named by the applicant had indeed a sustainability certification valid for the Union (EU-ISCC ⁽¹⁹⁾ certification). The other three companies (Archer Daniels Midland, Cargill, one of Conestoga Energy Partners) renewed their ISCC-PLUS ⁽²⁰⁾ certification that is applicable for deliveries outside of the Union, in particular to Japan. Moreover, all US producers and traders certified for the Union had been continuously certified since 2011 ⁽²¹⁾. Those companies continued renewing their certification also during the period of application of the anti-dumping measures, despite the fact that they did not sell to the Union. Hence, the evidence on the file points to the fact that Union RED certification is also economically important for sales to other markets, as a global sign of quality. Therefore, based on the data available, the Commission concluded that the renewal of certification cannot be understood only as an indication of the US producers' intentions to resume exports to the Union, but more broadly as proof of being sustainable, which is also relevant for exports to other markets. Further, the certification obligation is an additional factor, alongside the water content requirement and the existing import duties, limiting the access of the US producers and/or exporters to the Union market and as such reducing its attractiveness.

- (101) With regard to the plans of ADM, although the Commission acknowledged that ADM intended to focus more on exports concerning the fuel ethanol produced in its Peoria plant, there is no evidence that the company intended to target the Union market, particularly as ADM was not certified under RED. It should be, furthermore, noted that the plant reconfiguration was supposed to steer the production away from the fuel ethanol and towards the beverage and industrial ethanol. This change would in fact decrease the production capacity of that plant by 100 million gallons (approximately 300 thousand tonnes) as elaborated in another news article ⁽²²⁾.
- (102) Subsequently, both claims concerning the intentions of US producers and traders to redirect their sales to the Union market described in recitals 98 and 99 must be rejected.
- (103) The applicant further submitted a study by an external team of economists to claim that the Commission's calculations concerning the attractiveness of the Union market in terms of prices were not correct, and that, contrary to the Commission's conclusions, the Union market is attractive for US exports.
- (104) The Commission acknowledged that in comparison to some of the US export markets, the Union market might be an attractive market in terms of price. Nevertheless, in the framework of assessing whether there was a likelihood of further injurious dumping, as required by Article 11(2) of the basic Regulation, and as explained in recitals 48 and 59, the Commission carried out its analysis of the attractiveness of the Union market in terms of prices on the basis of the three individual export markets suggested by the applicant. For completeness, it also did so with the prices of all US exports to third countries, excluding those to the Union, in total. The Commission is not legally required to examine every export market individually. In the present case the Commission examined two biggest US export markets and a third market selected by the applicant. It would be disproportionate to individually examine all 36 export markets (excluding the Union) of US producers and/or exporters of the product concerned when an analysis of the largest export markets does not reveal sufficient evidence of attractiveness in price. Further, as already concluded in recital 59, the applicant did not provide any justification as to why the three US export markets initially proposed by it and examined by the Commission did no longer constitute a suitable basis for the Commission's analysis. In relation to Brazil, Canada, and Peru, the three markets suggested by the applicant, the study makes the same findings as the Commission concerning the attractiveness of the Union market in terms of price. Therefore, the Commission considered that the submitted study did not provide any evidence of error in Commission's calculation. On the contrary, the Commission considered that the study submitted by the applicant supported its initial findings.
- (105) Following the disclosure, the applicant submitted evidence on the level of import duties in China. With regard to China, the applicant further claimed that the fact that the exports to China had been already absorbed by other third countries should have been understood as a clear recognition that trade diversion had already been taking place.

⁽¹⁹⁾ Available at <https://www.iscc-system.org/process/audit-and-certification-process/iscc-system-documents/> (last viewed 19 March 2019).

⁽²⁰⁾ Available at <https://www.iscc-system.org/process/audit-and-certification-process/iscc-system-documents/> (last viewed 19 March 2019).

⁽²¹⁾ Available at <https://www.iscc-system.org/certificates/all-certificates/> (last viewed 15 March 2019).

⁽²²⁾ Available at <http://ethanolproducer.com/articles/14531/adm-announces-plans-to-reconfigure-ethanol-complex-in-illinois> (last viewed 15 March 2019).

- (106) The Commission acknowledged that the applicant submitted sufficient evidence on the level of import duties in China on ethanol originating in the US. The Commission did not deny that the US exporters sought new markets after the import duties in China increased. Nevertheless, the Commission considered that the levels of US exports to China during the review investigation period are the most relevant to analyse the threat of possible trade diversion towards the Union market. Volumes that had already found new markets are not considered to be as relevant.
- (107) Following the disclosure, the applicant claimed that the Brazilian market is not attractive for the US producers and/or exporters in view of the 20 % import tariff imposed on imports exceeding an import quota as explained in recital 96. To support this claim, the applicant referred to a news article dated October 2018 stating that [*e*]xports of corn-based US ethanol to Brazil sank to the lowest levels in nearly three years in August ⁽²³⁾. The applicant further claimed that the Commission should have taken into account the fact that Brazil has a strong domestic demand, but its supply situation, and therefore its import needs, vary. According to the applicant, most of the Brazilian sugar and bioethanol refineries are ‘mixed units’ able to switch between the production of sugar and bioethanol based on the prices and profitability of those two products.
- (108) With regard to the effect of the tariff rate quota, it should be noted that the quoted news article merely stated that the monthly export volumes in August 2018 reached a level that was the lowest since October 2015. Indeed, the export statistics of US ITC showed zero export volumes in August 2018 – a situation that last occurred in October 2015. However, the news article does not provide any information about export trends save for this comparison between August 2018 and October 2015. In fact, the US exports to Brazil resumed in September 2018 and in total increased in 2018 in comparison to the previous year.
- (109) In addition, the Commission considered that the applicant did not provide sufficient evidence about the structure and functioning of the Brazilian bioethanol industry, nor was the Commission able to retrieve such evidence. Contrary to the claims of the applicant, the export statistics by US ITC showed that US exports of fuel ethanol to Brazil had been continuously increasing in the period considered and grew also in 2018. Therefore, the applicant’s claims concerning the attractiveness of the Brazilian market for US producers and/or exporters must be rejected.
- (110) Following the disclosure, the applicant claimed that the Commission artificially reduced the likely impact on the Union market of the Peruvian measures by viewing potential trade diversion from China and Peru in isolation.
- (111) Taking into account the specifics of the Union market, i.e. the maximum allowed water content of the product under review and the RED sustainability certification that is *de facto* necessary to sell on the Union market as explained in recital 100, the Commission considered it unlikely that the US exports to Peru and China would be redirected to the Union market to their full extent. Furthermore, the applicant did not provide any evidence that would support its assertion. Therefore, this claim must be rejected.

3.3.3. Conclusion on the likelihood of recurrence of dumping

- (112) In light of the above assessment on the likelihood of recurrence of dumping should measures be allowed to lapse, the Commission concluded it unlikely that US bioethanol producers would export significant quantities of bioethanol to the Union at dumped prices, should the measures be allowed to lapse.
- (113) Following the disclosure, the applicant claimed that the Commission should have followed its past practice to conclude that the non-cooperation of the US producers constitutes additional – and important – evidence that ‘[*e*]xporting producers were not willing or able to show that no dumping would take place if measures were allowed to lapse’ ⁽²⁴⁾.
- (114) In response, the Commission, first, recalled that its decisional practice – carried out on a case-by-case assessment – cannot bind future investigations and is, consequently, no indicator of how certain findings by the Commission should be made. Second, the determination in the investigation cited was considered an additional factor, among many, that led the Commission to its conclusion in that particular case. Third, as additional and supplementary factor, the non-cooperation of the US exporting producers may be considered as inhibiting the collection of detailed information with regard to the assessment of likelihood of continuation and recurrence of dumping, leading necessarily to the resort to the facts available under Article 18 of the basic Regulation. The Commission,

⁽²³⁾ Available at <https://www.reuters.com/article/us-usa-ethanol-brazil/u-s-ethanol-exports-to-brazil-drop-to-nearly-three-year-low-idUSKCN1MF2FI> (last viewed 15 March 2019).

⁽²⁴⁾ Council Regulation (EC) No 1001/2008 of 13 October 2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ L 275, 16.10.2008, p. 18).

however, considered that non-cooperation cannot be the reason for extending the measures. In this particular case, the Commission did, indeed, deem the non-cooperation by US exporting producers an element inhibiting a full and thorough assessment of all the factors and therefore applied facts available. Having considered all the evidence available before it, and under application of Article 18 of the basic Regulation, the Commission concluded that there is no likelihood of recurrence of dumping should the measures be allowed to lapse. Therefore, this claim, too, must be rejected.

3.4. Conclusion

- (115) Consequently, in light of the lack of a likelihood of recurrence of dumped exports from the country concerned, there is no need to analyse the likelihood of recurrence of injury and Union interest. The measures on imports of bioethanol originating in the United States of America should therefore be repealed and the proceeding terminated.

4. CONCLUSION

- (116) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of bioethanol originating in the US, imposed by Implementing Regulation (EU) No 157/2013, should be repealed.
- (117) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping duty on imports of bioethanol, sometimes referred to as 'fuel ethanol', i.e. ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union), denatured or undenatured, excluding products with a water content of more than 0,3 % (m/m) measured according to the standard EN 15376, but including ethyl alcohol produced from agricultural products (as listed in Annex I to the Treaty on the Functioning of the European Union) contained in blends with gasoline with an ethyl alcohol content of more than 10 % (v/v) intended for fuel uses, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 21, ex 2710 12 25, ex 2710 12 31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 50, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 99 92 (TARIC codes 2207 10 00 12, 2207 20 00 12, 2208 90 99 12, 2710 12 21 11, 2710 12 25 92, 2710 12 31 11, 2710 12 41 11, 2710 12 45 11, 2710 12 49 11, 2710 12 50 11, 2710 12 70 11, 2710 12 90 11, 3814 00 10 11, 3814 00 90 71, 3820 00 00 11 and 3824 99 92 66) and originating in the US is hereby repealed and the proceeding concerning these imports is terminated.

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, 14 May 2019.

For the Commission
The President
Jean-Claude JUNCKER