

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of a partial interim review of the countervailing measures applicable to 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

(2015/C 162/09)

The European Commission ('the Commission') has received a request for a partial interim review pursuant to Article 19 and Article 23(6) of 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').

1. Request for review

The request for review was lodged by DSM Nutritional Products ('the applicant'), an exporting producer from Canada ('the country concerned').

The review is limited in scope to the examination of the possibility of granting an exemption from the countervailing measures applicable to 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, as far as the applicant is concerned.

2. Product under review

The product subject to this review is fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, originating in the United States of America or consigned from Canada, whether declared as originating in Canada or not ('the product under review'), 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 92, ex 3824 90 93, 3826 00 10 and ex 3826 00 90.

3. Existing measures

The measures currently in force are a definitive countervailing duty imposed by Council Regulation (EC) No 598/2009 ⁽²⁾, and extended to imports consigned from Canada, whether declared as originating in Canada or not, and to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America by Council Implementing Regulation (EU) No 443/2011 ⁽³⁾ ('the existing measures').

4. Grounds for the review

The request pursuant to Article 19 and Article 23(6) of the basic Regulation is based on *prima facie* evidence, provided by the applicant, demonstrating that the applicant is a genuine producer of the product under review able to produce the entire quantity 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 existing measures.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 1).

Furthermore, the applicant alleges that it is not related to any exporting producers subject to the existing measures, and that it is not circumventing the existing measures.

5. Procedure

Having determined, after informing the Member States, that sufficient evidence exists to justify the initiation of a partial interim review limited to the examination of the possibility of granting an exemption, as far as the applicant is concerned, from the countervailing measures applicable to 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 Commission hereby initiates a review in accordance with Article 19 and Article 23(6) of the basic Regulation.

5.1. Investigating exporting producer

In order to obtain the information it deems necessary for the investigation, the Commission will send a questionnaire to the applicant as an exporting producer. The applicant must submit the completed questionnaire and supporting evidence to the Commission within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*, unless otherwise specified.

5.2. Other written submissions

Subject to the provisions of this Notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must be submitted to the Commission within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*.

5.3. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard must be made in writing and must specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.4. Instructions for making written submissions and sending completed questionnaires and correspondence

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 rights of defence.

All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' (!).

Interested parties providing 'Limited' 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 must be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

Interested parties are invited to make all submissions and requests by e-mail including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using e-mail, 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: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf The interested parties must indicate their name, address, telephone and a valid e-mail

(!) A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping 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).

address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by e-mail 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 e-mail, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1040 Bruxelles/Brussel
BELGIQUE/BELGIË
E-mail: TRADE-BIODIESEL-DSM@ec.europa.eu

6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits set out in the basic Regulation, 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.

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.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on 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.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate 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. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among other things, to the possibility of granting the exemption to the applicant.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

8. Schedule of the investigation

The investigation will be concluded, pursuant to Article 22(1) of the basic Regulation, within 15 months of the date of the publication of this Notice in the *Official Journal of the European Union*.

9. **Processing of personal data**

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.