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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation regarding the anti-dumping measures in force on imports of biodiesel originating in Argentina and Indonesia, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organisation in the EU — Anti-Dumping Measures on Biodiesel dispute (DS473)

(2016/C 476/04)

This notice is published pursuant to Articles 1(1)(a) and 2 of Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ⁽¹⁾ ('the WTO enabling Regulation').

On 26 October 2016, the WTO Dispute Settlement Body (DSB) adopted the panel report, as modified by the Appellate Body report ('Reports') ⁽²⁾, in the European Union — Anti-Dumping Measures on Biodiesel from Argentina dispute (DS473).

In the Appellate Body report, it was found, inter alia, that the EU acted inconsistently with:

- Article 2.2.1.1 of the WTO Anti-Dumping Agreement ('ADA') by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers,
- Article 2.2 of the ADA and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel,
- Article 9.3 of the ADA and Article VI:2 of the GATT 1994 by imposing anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the ADA and Article VI:1 of the GATT 1994, respectively.

In the panel report, it was found, inter alia, that the EU acted inconsistently with:

- Articles 3.1 and 3.4 of the ADA in its examination of the impact of the dumped imports on the domestic industry, insofar as it relates to production capacity and capacity utilisation.

1. Initiation of a review

After informing the Member States in accordance with Articles 1(3) and 2(3) of the WTO enabling Regulation, the Commission hereby initiates a review based on Articles 1(3) and 2(3) of the WTO enabling Regulation. The purpose of the review is to bring the anti-dumping measures imposed on imports of biodiesel from Argentina into conformity with the above recommendations and rulings contained in the Reports. The Commission notes that anti-dumping measures imposed on imports of biodiesel from Indonesia are subject to the pending WTO dispute European Union — Anti-Dumping Measures on Biodiesel from Indonesia (DS480). In that dispute, Indonesia raised essentially the same

⁽¹⁾ OJ L 83, 27.3.2015, p. 6.

⁽²⁾ WTO, Report of the Appellate Body, AB-2016-4, WT/DS473/AB/R, 6 October 2016 ('Appellate Body report'). WTO, Report of the Panel, WT/DS473/R, 29 March 2016 ('panel report').

claims as Argentina in DS473. As the legal interpretations contained in the Reports appear to be also relevant for the investigation concerning Indonesia, the Commission considers it appropriate that also the anti-dumping measures imposed on imports of biodiesel from Indonesia are examined in the context of this review. The measure which needs to be brought into conformity with WTO law is Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia⁽¹⁾. The scope of the present review is limited to the cost of production of the product under investigation when constructing its normal value, and to the production capacity and capacity utilisation in the context of establishing the impact of the dumped imports on the domestic industry. This is without prejudice to the consequences the review may have on other elements of the Implementing Regulation (EU) No 1194/2013. The review will be made based on facts existing in the investigation period of Implementing Regulation (EU) No 1194/2013, namely the period from 1 July 2011 to 30 June 2012, and in the period 1 January 2009 to 30 June 2012, which is the period considered for the examination of trends relevant for the assessment of injury.

Implementing Regulation (EU) No 1194/2013 may be repealed or amended in order to comply with the recommendations, rulings and legal interpretations of the DSB. However, pursuant to Article 3 of the WTO enabling Regulation, any measures adopted as a consequence of the present review will not have retroactive effects, that is, they shall take effect from the date of their entry into force and shall not serve as a basis for the reimbursement of the duties collected prior to that date.

2. Procedure

In accordance with Articles 1(2) and 2(2) of the WTO enabling Regulation, the Commission hereby requests interested parties, including the exporting producers in Argentina and Indonesia and the Union industry, to provide all necessary information in order to complete the information obtained during the investigation that resulted in the adoption of Implementing Regulation (EU) No 1194/2013. In order to do so and to participate in the present review all interested parties are hereby invited to contact the Commission, preferably by email, immediately but no later than 15 days after the publication of this Notice in the *Official Journal of the European Union*, in order to make themselves known.

All interested parties may also request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the review 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.

3. Disclosure

All interested parties will be informed of the essential facts and considerations on the basis of which it will be intended to repeal or amend the Implementing Regulation (EU) No 1194/2013 and will be given an opportunity to comment within a period of at least 10 days.

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'⁽²⁾.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(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. 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.

⁽¹⁾ OJ L 315, 26.11.2013, p. 2.

⁽²⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of the 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 (OJ L 176, 30.6.2016, p. 21) ('basic Regulation') and Article 6 of the ADA. 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).

Interested parties are invited to make all submissions and requests by email 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 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: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. 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.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Brussels
BELGIUM

Email: Trade-R658-Biodiesel@ec.europa.eu

5. Non-cooperation

In cases where 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 18 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.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 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.

6. 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.

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/>

7. 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.