

COMMISSION REGULATION (EU) No 330/2013

of 10 April 2013

making imports of biodiesel originating in Argentina and Indonesia subject to registration

THE EUROPEAN COMMISSION,

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 16(4) and 24(5) thereof,

After consulting the Advisory Committee,

Whereas:

(1) On 10 November 2012, the European Commission ('the Commission') announced by a notice published in the *Official Journal of the European Union*⁽²⁾ ('notice of initiation'), the initiation of an anti-subsidy proceeding concerning imports of biodiesel originating in Argentina and Indonesia ('the countries concerned') following a complaint lodged on 26 September 2012 by the European Biodiesel Board ('the complainant') on behalf of producers representing more than 25 % of the total Union production of biodiesel.

A. PRODUCT CONCERNED

(2) The product concerned by this registration is the same as that defined in the notice of initiation, i.e. fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90, and originating in the countries concerned.

B. REQUEST

(3) Following the publication of the notice of initiation, the complainant requested in December 2012 that imports of the product concerned are made subject to registration

pursuant to Article 24(5) of the basic Regulation so that measures may subsequently be applied against those imports from the date of such registration.

C. GROUNDS FOR THE REGISTRATION

(4) According to Article 24(5) of the basic Regulation, the Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

(5) The complainant claimed that registration is justified as the product concerned was being subsidised and injury to the Union industry, which is difficult to repair, was caused by the surge in subsidised imports in a relatively short period of time.

(6) The Commission has at its disposal sufficient prima facie evidence that imports of the product concerned from the countries concerned are being subsidised. In the anti-subsidy complaint the Union industry provided evidence that the product concerned is being subsidised in both countries concerned through a system of Differential Export Taxation. In both countries concerned an export tax is charged on the raw material, at rates which are higher than those charged on the export of biodiesel. This approach effectively obliges the producers of the raw material to sell on the domestic market, thus depressing prices and artificially reducing the costs of the biodiesel producers. The evidence in the complaint provides sufficient support at this stage that the exporters in question are being subsidised in their exports of biodiesel.

(7) As regards injury, the Commission has at its disposal sufficient prima facie evidence that the exporting producers' subsidisation is causing material injury to the Union industry, which is difficult to repair. This evidence consists of detailed data, contained in the anti-subsidy complaint and request for registration and supported by information from the industry and public sources, concerning the key injury factors set out in Article 8(5) of the basic Regulation.

(8) The request also provides sufficient evidence of critical circumstances where, for the subsidised product in question, injury, which is difficult to repair, is caused

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ C 342, 10.11.2012, p. 12.

by massive imports benefiting from countervailable subsidies in a relatively short period of time. Evidence of such circumstances includes the rapid nature of the deterioration of the situation of the Union industry.

- (9) The level of imports of biodiesel from the countries concerned reaches a peak during spring and summer as, due to its physical and chemical properties, the use of these products is limited when temperatures are low. In view of the initiation of the current proceeding, it is likely that the exporting producers will negotiate contracts with EU importers for sales of increased volumes of biodiesel prior to the adoption of provisional measures, if any, and inventories will be rapidly built up by importers. The period prior to the initiation also showed a strong increase of imports.
- (10) In view of the above, it may be necessary, in order to preclude the recurrence of such injury, to assess countervailing duties, if any, retroactively on those imports.

D. PROCEDURE

- (11) In view of the above, the Commission has concluded that the complainant provided sufficient evidence to justify making imports of the product concerned subject to registration in accordance with Article 24(5) of the basic Regulation.
- (12) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

E. REGISTRATION

- (13) Pursuant to Article 24(5) of the basic Regulation, imports of the product concerned should be made subject to registration in order to ensure that, should the investigation result in findings leading to the imposition of anti-subsidy duties, those duties should, if the necessary conditions are fulfilled, be levied retroactively in accordance with applicable legal provisions.
- (14) Any future liability would emanate from the findings of the anti-subsidy investigation. The allegations in the complaint requesting the initiation of an investigation mentions subsidy margins of 18 % for Indonesia, and 30 % for Argentina, and injury margins between 28,5 and 29,5 % for Argentina and between 35,5 and 37,5 % for Indonesia.
- (15) In order that the registration is sufficiently effective in view of eventual retroactive levying of an anti-subsidy

duty, the declarant should indicate on the customs declaration the proportion in blends, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

F. PROCESSING OF PERSONAL DATA

- (16) 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⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities shall, pursuant to Article 24(5) of Regulation (EC) No 597/2009, take the appropriate steps to register the imports into the Union of fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97 (TARIC codes 3824 90 97 01, 3824 90 97 03 and 3824 90 97 04), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30), and originating in Argentina and Indonesia. Registration shall expire nine months following the date of entry into force of this Regulation.

The declarant shall indicate on the customs declaration the proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 20 days from the date of publication of this Regulation.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

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, 10 April 2013.

For the Commission
The President
José Manuel BARROSO
