

EBB PRESS RELEASE

EU biodiesel industry wins legal case BP vs Council:

European Tribunal rejects BP complaint on B19 (B99 circumvention)



The General Court released today its conclusions on the complaint opposing BP North America against the Council of the European Union (Case T-385/11).

EBB provided technical and market information to support the defence led by the Council. This victory is extremely important since it confirms with a definitive judgement the legal stop to any kind of circumvention practice to import biodiesel in Europe via biodiesel blends lower than 20%, or via triangular trade. The anti-circumvention Regulations were not at all annulled as requested by BP, but on the contrary they even got reinforced by the Court's judgement. EBB Secretary General Raffaello Garofalo welcomes the outcome of this long-lasting procedure: "*The signal is clear: biodiesel duties against USA and, per extension, Indonesia and Argentina, are well defended also by the European Court of Justice against any kind of circumvention. The legal basis of EU biodiesel duties is even more solid after today's judgement.*" Mr. Garofalo said.

The judgement published today in fact rejects BP claims to be excluded from anti-circumvention duties for biodiesel originating from North America. It also obliges BP to pay for the legal expenses of the EU Council and of EBB. In this perspective an appeal of the decision by BP seems quite unlikely.

Background information

In 2009, EBB lodged a complaint against dumped and subsidised biodiesel imports from the US. In March 2009, the European Commission imposed extensive anti-dumping and countervailing measures of imports of US biodiesel. These measures are in place for five years and should expire in July 2014. Yet, while the EU duties contributed to re-establishing more favourable market conditions, cheap imports from the US continued on injuring European industry. Circumvention of the measures started to occur either as transshipment of US biodiesel in third countries, or through the exports of artificially designed blends containing less than 20% biodiesel. In May 2011, the Council of the European Union set retroactive anti-circumvention measures for imports consigned from Canada as well as for imports of US biodiesel blends below the 20% previous threshold.

BP Products North America challenged directly the Council of the European Union requesting the annulment of Regulation 443/2011 and 444/2011. BP Products North America claimed firstly that exports of B15 starting in 2010 did not circumvent the Anti-Dumping and Anti-Subsidy measures imposed by the Commission against US exports as B15 could not be considered as a slightly modified pure biodiesel. The industry further argued that, should B15 be considered as like-product, it did not meet the conditions for circumvention, explaining that no change in trade patterns occurred.

The Tribunal of the EU dismissed the legal action and rejects BP North America's request to annul anti-circumvention regulations, arguing that "*the applicant played a significant role in the circumvention proceedings*". It rejects all of the fourth pleas developed by BP Products North America and declares that "*the action in its entirety must be dismissed*".

Note to Editor: The Judgment of the General Court (Fourth Chamber) detailing the background, procedure and conclusions is available < [here](#) >