

**COMMISSION REGULATION (EU) No 721/2010**  
**of 11 August 2010**

**initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America by imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not and by imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and making such imports subject to registration**

THE EUROPEAN COMMISSION,

Having regard to the Treaty of 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 <sup>(1)</sup> (‘the basic Regulation’) and in particular Articles 23(4), 24(3) and 24(5) thereof,

After having consulted the Advisory Committee,

Whereas:

**A. REQUEST**

The European Commission (‘the Commission’) has received a request pursuant to Article 23(4) of the basic Regulation to investigate the possible circumvention of the countervailing measures imposed on imports of biodiesel originating in the United States of America.

The request was lodged on 30 June 2010 by the European Biodiesel Board (EBB) on behalf of the Union producers of biodiesel.

**B. PRODUCT**

The product concerned by the possible circumvention 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, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 41, 3824 90 91, ex 3824 90 97, and originating in the United States of America (‘the product concerned’).

The product under investigation 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, consigned from Canada and Singapore and biodiesel in a blend containing by weight 20 % or less 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 (‘the product under investigation’), currently falling within the same CN codes as the product concerned with the exception of CN code 3824 90 91 for which the investigation is limited to products consigned from Canada and Singapore.

**C. EXISTING MEASURES**

The measures currently in force and possibly being circumvented are countervailing measures imposed by Council Regulation (EC) No 598/2009 <sup>(2)</sup>.

**D. GROUNDS**

The request contains sufficient *prima facie* evidence that the countervailing measures on imports of biodiesel originating in the United States of America are being circumvented by means of the transshipment of biodiesel via Canada and Singapore and by exports of biodiesel in a blend containing by weight 20 % or less of biodiesel.

The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from the United States of America, Canada and Singapore to the Union has taken place following the imposition of measures on the product concerned, and that there is insufficient due cause or justification other than the imposition of the duty for such a change.

This change in the pattern of trade appears to stem from the transshipment of biodiesel originating in the United States of America via Canada and Singapore.

It is also submitted that following the imposition of the measures, exports of biodiesel in blends containing 20 % or less of biodiesel from the United States of America begun to arrive into the Union, allegedly taking advantage of the biodiesel content threshold set in the description of the product concerned.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

<sup>(2)</sup> OJ L 179, 10.7.2009, p. 1.

Furthermore, the request contains sufficient prima facie evidence that the remedial effects of the existing countervailing measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of biodiesel from Canada and Singapore and of biodiesel in blends containing 20 % or less of biodiesel, appear to have replaced imports of the product concerned. In addition, there is sufficient evidence that this increased volume of imports is made at prices well below the non-injurious price established in the investigation that led to the existing measures.

Finally, the request contains sufficient prima facie evidence that the prices of the product under investigation continue to be subsidised as previously established.

Should circumvention practices covered by Article 23 of the basic Regulation, other than the practices described above, be identified in the course of the investigation, the investigation may also cover these practices.

#### E. PROCEDURE

In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23 of the basic Regulation and to make imports of biodiesel consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not, as well as imports from the United States of America of biodiesel in a blend containing by weight 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, subject to registration, in accordance with Article 24(5) of the basic Regulation.

##### (a) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Canada and Singapore, to the exporters/producers and to the associations of exporters/producers in the United States of America, to the known importers and to the known associations of importers in the Union and to the authorities of the United States of America, Canada and Singapore. Information, as appropriate, may also be sought from the Union industry.

In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation in order to find out whether they are listed in the request and request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

The authorities of the United States of America and Canada and Singapore will be notified of the initiation of the investigation.

##### (b) Collection of information and holding of hearings

All interested parties are hereby 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.

##### (c) Exemption of registration of imports or measures

In accordance with Article 23(5) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

Since the possible circumvention takes place outside the Union, exemptions may be granted, in accordance with Article 23(5) of the basic Regulation, to producers of the product under investigation that can show that they are not related<sup>(1)</sup> to any producer subject to the measures<sup>(2)</sup> and that are found not to be engaged in circumvention practices as defined in Article 23(3) of the basic Regulation. Producers wishing to obtain an exemption should submit a request duly supported by evidence within the time limit indicated in Article 3(3) of this Regulation.

#### F. REGISTRATION

Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Canada and Singapore as well as imports from the United States of America of biodiesel in a blend containing by weight 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin.

<sup>(1)</sup> In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

<sup>(2)</sup> However, even if producers are related in the aforementioned sense to companies subject to the measures in place on imports originating in the United States of America (the original countervailing measures), an exemption may still be granted if there is no evidence that the relationship with the companies subject to the original measures was established or used to circumvent the original measures.

In order that the registration is sufficiently effective in view of an eventual retroactive levying of a countervailing duty, the declarant should indicate on the customs declaration the proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

#### G. TIME LIMITS

In the interest of sound administration, time limits should be stated within which:

- interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,
- producers in Canada Singapore and the United States of America may request exemption from registration of imports or measures,
- interested parties may make a written request to be heard by the Commission.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

#### H. NON-COOPERATION

In cases in which 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 in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

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 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

#### I. SCHEDULE OF THE INVESTIGATION

The investigation will be concluded, according to Article 23(4) of the basic Regulation, within nine months of the date of the publication of this regulation in the *Official Journal of the European Union*.

#### J. PROCESSING OF PERSONAL DATA

It is noted that 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 Union institutions and bodies and on the free movement of such data <sup>(1)</sup>.

#### K. HEARING OFFICER

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of the Directorate-General for Trade (<http://ec.europa.eu/trade>).

HAS ADOPTED THIS REGULATION:

#### Article 1

An investigation is hereby initiated pursuant to Article 23(4) of Regulation (EC) No 597/2009 in order to determine:

- (a) if imports into the Union of 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, consigned from Canada and Singapore, whether declared as originating in Canada and Singapore or not, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 21), ex 1518 00 91 (TARIC code 1518 00 91 21), ex 1518 00 99 (TARIC code 1518 00 99 21), ex 2710 19 41 (TARIC code 2710 19 41 21), ex 3824 90 91 (TARIC code 3824 90 91 10) and ex 3824 90 97 (TARIC code 3824 90 97 01) are circumventing the measures imposed by Council Regulation (EC) No 598/2009; and
- (b) if imports into the Union of biodiesel in a blend containing by weight 20 % or less 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, and currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 30), ex 1518 00 91 (TARIC code 1518 00 91 30), ex 1518 00 99 (TARIC code 1518 00 99 30), ex 2710 19 41 (TARIC code 2710 19 41 30) and ex 3824 90 97 (TARIC code 3824 90 97 04) are circumventing the measures imposed by Council Regulation (EC) No 598/2009.

<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.

### Article 2

The Customs authorities are hereby directed, pursuant to Article 23(4) and Article 24(5) of Regulation (EC) No 597/2009, to take the appropriate steps to register the imports into the Union identified in Article 1 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/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by Regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption of registration and having been found to fulfil the conditions for an exemption to be granted.

### Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views in writing and submit questionnaire replies or any other information within 37 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 August 2010.

3. Producers in Canada, Singapore and the United States of America requesting exemption from registration of imports or measures should submit a request duly supported by evidence within the same 37-day time limit.

4. Interested parties may also apply to be heard by the Commission within the same 37-day time limit.

5. Any information, any request for a hearing or for a questionnaire as well as any request for exemption from registration of imports or measures must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' <sup>(1)</sup> and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

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### Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

For the Commission

The President

José Manuel BARROSO

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<sup>(1)</sup> This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.