

Notice of initiation of an anti-subsidy proceeding concerning imports of biodiesel originating in the United States of America

(2008/C 147/05)

The Commission has received a complaint pursuant to Article 10 of Council Regulation (EC) No 2026/97 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation')⁽¹⁾, alleging that imports of biodiesel, originating in the United States of America ('the country concerned'), are being subsidised and are thereby causing material injury to the Community industry.

1. Complaint

The complaint was lodged on 29 April 2008 by the European Biodiesel Board ('the complainant') on behalf of producers representing a major proportion, in this case more than 25 % of the total Community production of biodiesel.

2. Product

The product allegedly being subsidised is fatty acid monoalkyl esters and/or paraffinic gasoils from synthesis and/or hydro-treatment, of non-fossil origin (commonly known as 'biodiesel'), whether in pure form or in a blend, mainly but not exclusively used as renewable fuel originating in the United States of America ('the product concerned'), normally declared within CN codes 3824 90 91, ex 3824 90 97, ex 2710 19 41, ex 1516 20 98, ex 1518 00 91, ex 1518 00 99. These CN codes are only given for information.

3. Allegation of subsidisation

It is alleged that the producers of the product concerned from the United States of America have benefited from a number of Federal subsidies granted by the Government of the United States of America and from State subsidies granted by the Governments of several States of the United States of America. The Federal subsidies consist of tax credits for biodiesel production and sale in the form of (i) diesel fuel excise tax credit and (ii) income tax credits, and the US Department of Agriculture bioenergy program. The State schemes are the Illinois biodiesel tax exemption, the Florida renewable energy technology grants program, the Florida hydrogen and biofuels tax exemption, the Florida hydrogen and biofuels investment tax credit, the Iowa alternate energy revolving loan program, the Iowa value-added agricultural products and processes financial assistance program, the Iowa enterprise zone program and the high quality job creation program, the Texas new technology research and develop-

ment program, the Texas ethanol and biodiesel blend tax exemption, the Missouri qualified biodiesel producer incentive fund, the Washington State biofuels tax deduction, the Washington State biofuels retail tax exemption, the Washington State biofuels production tax exemption, the Washington State energy freedom program, the Alabama alternative fuels and research development fund, the North Dakota biofuels partnership in assisting community expansion loan program, the North Dakota biodiesel sales equipment tax credit, the North Dakota biodiesel production equipment tax credit, the North Dakota biodiesel income tax credit, the North Dakota biodiesel equipment tax exemption, the Indiana biodiesel production tax credit, the Indiana biodiesel blending tax credit, the Kentucky alternative fuel production tax incentive refund, the Kentucky alternative fuel production tax credit, the Nebraska biodiesel production investment tax credit, the Nebraska alternative fuel vehicle and refuelling infrastructure loans and the Nebraska ethanol and biodiesel tax exemption.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of the United States of America or other state Governments and confer a benefit to the recipients, i.e. to exporters/producers of biodiesel. They are alleged to be limited to specific companies and therefore specific and countervailable.

4. Allegation of injury

The complainant has provided evidence that imports of the product concerned from the United States of America have increased overall in absolute terms and in terms of market share.

It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a negative impact on the market share held and the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance and the financial situation of the Community industry.

It is further alleged that the unfair competition from the United States of America is causing the material retardation of the establishment of a Community industry which is at a very early stage of development.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Community industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

5.1. Procedure for the determination of subsidisation and injury

The investigation will determine whether the product concerned originating in the United States of America is being subsidised and whether this subsidisation has caused injury.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling in accordance with Article 27 of the basic Regulation.

(i) Sampling for exporters/producers in the United States of America

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the format indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the turnover in local currency and the volume in metric tonnes of the product concerned ⁽¹⁾ sold for export to the Community during the period 1 April 2007 to 31 March 2008,
- the turnover in local currency and the sales volume in metric tonnes for the product concerned sold on the domestic market during the period 1 April 2007 to 31 March 2008,
- the precise activities of the company with regard to the product concerned (in particular, please state whether your company produces and/or blends biodiesel),

⁽¹⁾ Note that the product concerned is pure biodiesel and biodiesel in a blend. For biodiesel sold in blends, only the proportion of biodiesel should be reported, e.g. 100 tonnes of blended product consisting of 50 % biodiesel and 50 % mineral diesel should be reported as a sale of 50 tonnes of the product concerned.

- the names and the precise activities of all related companies ⁽²⁾ involved in the production and/or selling (export and/or domestic) of the product concerned,

- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the exporting country, and any known associations of exporters/producers.

Since a company cannot be certain that it will be selected in the sample, exporters/producers that wish to claim an individual amount of countervailable subsidisation pursuant to Article 27(3) of the basic Regulation are advised to request a questionnaire within the deadline foreseen in point 6(a)(i) of this notice and file it within the deadline foreseen in point 6(a)(ii) first paragraph of this notice. However, attention is drawn to the last sentence of point 5(b) of this notice.

(ii) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the total turnover in euro of the company during the period 1 April 2007 to 31 March 2008,
- the total number of employees,

⁽²⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- the precise activities of the company with regard to the product concerned,
- the volume in metric tonnes and value in euro of imports into and resales made in the Community market during the period 1 April 2007 to 31 March 2008 of the imported product concerned originating in the United States of America,
- the names and the precise activities of all related companies ⁽¹⁾ involved in the production and/or selling of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(iii) Sampling for Community producers

In view of the large number of Community producers supporting the complaint, the Commission intends to investigate injury to the Community industry by applying sampling.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all Community producers, or representatives acting on their behalf, are hereby requested to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the total turnover in euro of the company during the period 1 April 2007 to 31 March 2008,

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- the precise activities of the company with regard to the product concerned (in particular, please state whether your company produces and/or blends biodiesel),
- the value in euro of sales of the product concerned ⁽²⁾ made in the Community market during the period 1 April 2007 to 31 March 2008,
- the volume in metric tonnes of sales of the product concerned made in the Community market during the period 1 April 2007 to 31 March 2008,
- the volume in metric tonnes of the production of the product concerned during the period 1 April 2007 to 31 March 2008,
- the names and the precise activities of all related companies ⁽¹⁾ involved in the production and/or selling of the product concerned,
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have co-operated in the investigation. The consequences of non-cooperation are set out in point 8 below.

(iv) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient co-operation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

⁽²⁾ Note that the product concerned is pure biodiesel and biodiesel in a blend. For biodiesel sold in blends, only the proportion of biodiesel should be reported, e.g. 100 tonnes of blended product consisting of 50 % biodiesel and 50 % mineral diesel should be reported as a sale of 50 tonnes of the product concerned.

(b) *Questionnaires*

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community industry and to any association of producers in the Community, to the sampled exporters/producers in the United States of America, to any association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting country concerned.

Exporters/producers in the United States of America requesting the calculation of an individual amount of countervailable subsidisation, with a view to the application of Articles 27(3) and 15(3) of the basic Regulation, must submit a completed questionnaire within the time limit set in point 6(a)(ii) of this notice. They therefore have to request a questionnaire within the time limit set in point 6(a)(i). However, such parties should be aware that if sampling is applied to exporters/producers, the Commission may nonetheless decide not to calculate an individual amount of countervailable subsidisation for them, if the number of exporters/producers is so large that individual examination would be unduly burdensome and would prevent the timely completion of the investigation.

(c) *Collection of information and holding of hearings*

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence has to reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

5.2. Procedure for assessment of Community interest

In accordance with Article 31 of the basic Regulation and in the event that the allegations of subsidisation and injury caused thereby are substantiated, a decision will be reached as to whether the adoption of countervailing measures would not be against the Community interest. For this reason the Commission may send questionnaires to the known Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing setting the particular reasons why they should be heard within the time limit set in point 6(a)(iii). It should be noted that any

information submitted pursuant to Article 31 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits(a) *General time limits*

(i) For parties to request a questionnaire

All interested parties should request a questionnaire as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

(ii) For parties to make themselves known, to submit questionnaire replies and any other information

All 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 and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. All exporters/producers concerned by this proceeding, who wish to apply for individual examination in accordance with Article 27(3) of the basic Regulation, must also submit a questionnaire reply within 40 days of the date of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. 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 aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limits specified in point 6(b)(iii).

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) *Specific time limit in respect of sampling*(i) The information specified in points 5.1(a)(i), 5.1(a)(ii) and 5.1(a)(iii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

- (ii) All other information relevant for the selection of the sample as referred to in 5.1(a)(iv) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties 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 notice, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ 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'.

Commission address for correspondence:

European Commission
Directorate General for Trade
Directorate H
Office: J-79 4/23
B-1049 Brussels
Fax (32-2) 295 65 05

8. 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, provisional or final 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 the 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.

9. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1) of the basic Regulation, provisional measures may be imposed no later than 9 months from the publication of this notice in the *Official Journal of the European Union*.

10. 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 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 ⁽²⁾.

11. 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 DG 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 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 of the website of DG Trade (<http://ec.europa.eu/trade>).

⁽¹⁾ 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 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.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.