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COMMISSION IMPLEMENTING DECISION (EU) 2024/1273

of 7 May 2024

terminating the investigation of the possible circumvention, by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, of the countervailing measures concerning imports of biodiesel originating in Indonesia, and terminating the registration of imports

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union [1] ('the basic Regulation'), and in particular Article 14(1) thereof,

Whereas:

1. **PROCEDURE**

(1) On 17 August 2023, the European Commission ('the Commission') initiated an investigation concerning the possible circumvention of the countervailing measures imposed by Commission Implementing Regulation (EU) 2019/2092 [2] on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, and it made such imports subject to registration. The Commission published a Commission Implementing Regulation (EU) 2023/1637 [3] to this effect in the *Official Journal of the European Union*.

(2) The investigation was initiated following a request lodged by the European Biodiesel Board ('the applicants').

(3) The request contained evidence that a change in the pattern of trade involving exports from Indonesia and the People's Republic of China and the United Kingdom to the Union following the imposition of the existing countervailing measures, and that such change stemmed from a practice for which there was insufficient due cause or economic justification other than the imposition of the duty, namely the consignment of the product concerned via the People's Republic of China and the United Kingdom to the Union. The evidence also showed that this practice undermined the remedial effects of the existing countervailing measures on the product concerned both in terms of quantity and prices, and that the product under investigation and/or parts thereof still benefit from the subsidy. The evidence provided was considered sufficient to justify the initiation.

(4) The Commission informed the applicants, the known exporting producers in the People's Republic of China and the United Kingdom and importers, as well as representatives of the People's Republic of China and the United Kingdom of the initiation of the investigation. Producers of the product concerned in the People's Republic of China and the United Kingdom were made aware of the possibility to request an exemption if they could show that they were not engaged in circumvention practices as defined in Article 23(3) of the basic Regulation.

[1] OJ L 176, 30.6.2016, p. 55.
[2] Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia (OJ L 317, 9.12.2019, p. 42).
[3] Commission Implementing Regulation (EU) 2023/1637 of 16 August 2023 initiating an investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2019/2092 on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, and making such imports subject to registration, (OJ L 204, 17.8.2023, p. 3).

(5) Interested parties were given an opportunity to make their views known in writing and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

2. **PRODUCT CONCERNED**

(6) The product concerned by the possible circumvention is 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, classified on the date of entry into force of Implementing Regulation (EU) 2019/2092 under CN codes ex 1516 20 98 (TARIC codes 1516209821, 1516209829 and 1516209830), ex 1518 00 91 (TARIC codes 1518009121, 1518009129 and 1518009130), ex 1518 00 95 (TARIC code 1518009510), ex 1518 00 99 (TARIC codes 1518009921, 1518009929 and 1518009930), ex 2710 19 43 (TARIC codes 2710194321, 2710194329 and 2710194330), ex 2710 19 46 (TARIC codes 2710194621, 2710194629 and 2710194630), ex 2710 19 47 (TARIC codes 2710194721, 2710194729 and 2710194730), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92 (TARIC codes 3824999210, 3824999212 and 3824999220), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826009011, 3826009019 and 3826009030) and originating in Indonesia ('the product concerned'). This is the product to which the measures that are currently in force apply.

(7) The product under investigation is the same as that defined in the previous recital, currently falling under 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, ex 2710 20 11, ex 2710 20 16, ex 3824 99 92, ex 3826 00 10 and ex 3826 00 90, but consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not (TARIC codes 1516209822, 1516209823, 1516209831, 1516209832, 1518009122, 1518009123, 1518009131, 1518009132, 1518009510, 1518009511, 1518009922, 1518009923, 1518009931, 1518009932, 2710194322, 2710194323, 2710194331, 2710194332, 2710194622, 2710194623, 2710194631, 2710194632, 2710194722, 2710194723, 2710194731, 2710194732, 2710201122, 2710201123, 2710201131, 2710201132, 2710201622, 2710201623, 2710201631, 2710201632, 2710201691, 2710201692, 3824999211, 3824999213, 3824999215, 3824999216, 3826001021, 3826001022, 3826001051, 3826001052, 3826001090, 3826001091, 3826009012, 3826009013, 3826009031 and 3826009032) ('the product under investigation').

3. **WITHDRAWAL OF THE REQUEST AND DISCLOSURE**

(8) By letter of 19 January 2024, the applicants informed the Commission that they wished to withdraw the request.

(9) Withdrawal of an anti-subsidy complaint is governed by Article 14(1) of the basic Regulation, which provides that '(w)here the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Union interest'. As noted by the General Court in *Philips Lighting Poland and Philips Lighting v Council* ([4]), the Union institutions enjoy a wide discretion to continue or terminate an investigation following a withdrawal.

(10) The investigation had not brought to light any considerations showing that such termination would be against the Union interest.

(11) Therefore, the Commission considered that the investigation concerning the possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2019/2092 on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, should be terminated. Interested parties were informed accordingly and were given an opportunity to comment.

4. **COMMENTS TO THE DISCLOSURE**

(12) Subsequent to the disclosure, the Commission received comments from the applicants and from Valero Energy Limited, a blender from the United Kingdom.

([4]) Judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, ECLI: EU:T:2013:370, para. 87.

(13) In their comments, the applicants stated that the allegedly fraudulent practices, both in China and in the United Kingdom, are obvious in the biodiesel sector and that the fight against such practices is intrinsically in the Union's interest. Reference was made to Article 325(1) of the Treaty on the Functioning of the European Union ('TFEU') [5] which obliges the Union to 'counter fraud and any other illegal activities affecting the financial interests of the Union […] which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies'. In this respect, the applicants requested the Commission to put all its efforts to address those allegedly fraudulent practices and to disclose a summary of the fraudulent practices identified during the anti-circumvention proceedings.

(14) The Commission noted that the investigation at hand is carried out under Article 23 of the basic Regulation, the purpose of which is to investigate the possible circumvention of countervailing duties, not the fight against fraud in general. Article 325 TFEU foresees other mechanisms to counter fraud, and the Commission makes use of them as appropriate. The Commission therefore rejected the applicants' request.

(15) Valero Energy Limited supported the Commission's intended termination of the investigation.

5. **CONCLUSION**

(16) Therefore, the Commission considered that the investigation concerning the possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2019/2092 on imports of biodiesel originating in Indonesia by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, should be terminated. Consequently, the registration of such imports by means of Commission Implementing Regulation (EU) 2023/1637 should be terminated.

(17) This Decision is in accordance with the opinion of the Committee established by Article 25(1) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The investigation to determine if 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 classified under 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, ex 2710 20 11, ex 2710 20 16, ex 3824 99 92, ex 3826 00 10 and ex 3826 00 90, consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not (TARIC codes 1516209822, 1516209823, 1516209831, 1516209832, 1518009122, 1518009123, 1518009131, 1518009132, 1518009510, 1518009511, 1518009922, 1518009923, 1518009931, 1518009932, 2710194322, 2710194323, 2710194331, 2710194332, 2710194622, 2710194623, 2710194631, 2710194632, 2710194722, 2710194723, 2710194731, 2710194732, 2710201122, 2710201123, 2710201131, 2710201132, 2710201622, 2710201623, 2710201631, 2710201632, 2710201691, 2710201692, 3824999211, 3824999213, 3824999215, 3824999216, 3826001021, 3826001022, 3826001051, 3826001052, 3826001090, 3826001091, 3826009012, 3826009013, 3826009031 and 3826009032) are circumventing the measures imposed by Implementing Regulation (EU) 2019/2092, is hereby terminated.

Article 2

Customs authorities are directed to cease the registration of imports established in accordance with Article 2(1) of Implementing Regulation (EU) 2023/1637.

[5] OJ C 326, 26.10.2012, p. 188.

Article 3

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

Done at Brussels, 7 May 2024.

For the Commission
The President
Ursula VON DER LEYEN