

COMMISSION IMPLEMENTING REGULATION (EU) 2022/731**of 12 May 2022****amending Implementing Regulation (EU) 2021/1266 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America and Implementing Regulation (EU) 2021/1267 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ and in particular Articles 13(4) and 14(5) thereof and 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 ⁽²⁾ and in particular to Article 23(6) thereof,

Having regard to Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽³⁾ and Commission Implementing Regulation (EU) 2021/1267 of 29 July 2021 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council, ⁽⁴⁾

Whereas:

1. MEASURES IN FORCE**1.1. Anti-dumping duties**

- (1) By Regulation (EC) No 599/2009 ⁽⁵⁾, the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198 per tonne on imports 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, originating in the United States of America ('USA'). The anti-dumping duty imposed by that Regulation is hereafter referred to as the 'original anti-dumping measures'. The investigation that led to the imposition of the original anti-dumping measures will hereafter be referred to as 'the original anti-dumping investigation'.
- (2) By Council Implementing Regulation (EU) No 444/2011 ⁽⁶⁾ the Council extended, following an anti-circumvention investigation, the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not. By the same Regulation the Council also extended the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports 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 USA.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 277, 2.8.2021, p. 34.

⁽⁴⁾ OJ L 277, 2.8.2021, p. 62.

⁽⁵⁾ Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 26).

⁽⁶⁾ Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 12).

- (3) The measures currently in force are those imposed by Implementing Regulation (EU) 2021/1266, following an expiry review investigation of the original anti-dumping measures. The duties in force are fixed amounts ranging between EUR 0 per tonne to EUR 198 per tonne on imports from the sampled exporting producers, EUR 115,6 per tonne on imports from the non-sampled cooperating companies and a fixed amount of EUR 172,2 per tonne on imports from all other companies.
- (4) Article 4(2) of Implementing Regulation (EU) 2021/1266 provides the following: 'In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Article 1, from the duty extended by Article 2(1) and Article 3(1)'.

1.2. Countervailing duties

- (5) By Regulation (EC) No 598/2009 ⁽⁷⁾, the Council imposed a definitive countervailing duty, ranging from EUR 211,2 to EUR 237 per tonne net, on imports 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' originating in the United States of America'. The countervailing duty imposed by this Regulation is hereafter referred to as 'the original countervailing measures'. The investigation that led to the imposition of the original countervailing measures will hereafter be referred to as 'the original anti-subsidy investigation'.
- (6) By Implementing Regulation (EU) No 443/2011 ⁽⁸⁾, following an anti-circumvention investigation, the Council extended the definitive anti-countervailing imposed by Regulation (EC) No 598/2009 to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not. By the same Regulation, the Council also extended the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports 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 USA.
- (7) The measures currently in force are those imposed by Implementing Regulation (EU) 2021/1267, following an expiry review investigation of the original countervailing measures. The countervailing duties currently in force are fixed amounts ranging from EUR 211,2 to EUR 237 per tonne net on imports from the exporting producers.
- (8) Article 4(2) of Implementing Regulation (EU) 2021/1267 provides the following: 'In accordance with Article 23(6) of Regulation (EU) 2016/1037, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Article 1, from the duty extended by Article 2(1) and Article 3(1)'.

2. PROCEDURE

2.1. Request for an exemption

- (9) On 7 September 2021, the European Commission received a request for an exemption from the anti-dumping and countervailing measures applicable to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not. The request was made by the company Verbio Diesel Canada Corporation ('the applicant').

⁽⁷⁾ Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ L 179, 10.7.2009, p. 1).

⁽⁸⁾ Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 1).

- (10) The request contained evidence that Verbio was a new exporting producer and fulfilled the criteria for an exemption pursuant to Article 13(4) of Regulation (EU) 2016/1036 ('the basic anti-dumping Regulation') and Article 23(6) of Regulation (EU) 2016/1037 ('the basic anti-subsidy Regulation'), namely:
- (a) it did not export the product under review to the Union during the investigation period on which the measures were based;
 - (b) it has actually exported to the Union following the investigation period, or it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Union;
 - (c) it has not been engaging in circumvention practices.
- (11) The Commission found that the request provided sufficient evidence to justify the initiation of an investigation pursuant to Article 13(4) of the basic anti-dumping Regulation and to Article 23(6) of the basic anti-subsidy Regulation for the purpose of determining the possibility of granting the applicant an exemption from the extended measures.

2.2. Initiation

- (12) On 7 December 2021, by Implementing Regulation (EU) 2021/2157 ⁽⁹⁾ the Commission initiated the review of Implementing Regulations (EU) 2021/1266 and (EU) 2021/1267 for the purpose of determining the possibility of granting the applicant an exemption from the extended measures. In the same regulation the Commission repealed the anti-dumping duties imposed by Implementing Regulation (EU) 2021/1266 with regard to the imports of biodiesel by the applicant- and directed customs authorities to take appropriate steps to register such imports.
- (13) The Commission invited interested parties to contact it in order to participate in the review investigation. All interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission or the Hearing Officer in trade proceedings or both within the time limit set in Implementing Regulation (EU) 2021/2157. No comments or requests for a hearing were received.

2.3. Product under review

- (14) The product under review 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, whether declared as originating in Canada or not, currently falling under 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 43 (TARIC code 2710 19 43 21), ex 2710 19 46 (TARIC code 2710 19 46 21), ex 2710 19 47 (TARIC code 2710 19 47 21), ex 2710 20 11 (TARIC code 2710 20 11 21), ex 2710 20 16 (TARIC code 2710 20 16 21), ex 3824 99 92 (TARIC code 3824 99 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 50, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11).

2.4. Review investigation period

- (15) The review investigation covered the period from 1 April 2009 to 30 September 2021 ('review investigation period').

⁽⁹⁾ Commission Implementing Regulation (EU) 2021/2157 of 6 December 2021 initiating a review of Implementing Regulations (EU) 2021/1266 and (EU) 2021/1267 extending, respectively, the definitive anti-dumping and countervailing duty on imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, for the purposes of determining the possibility of granting an exemption from those measures to one Canadian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration (OJ L 436, 7.12.2021, p. 28).

2.5. Investigation

- (16) On 7 December 2021, the Commission requested the applicant to complete a questionnaire in order to obtain information it deemed necessary for its investigation. The applicant submitted the questionnaire reply on 6 January 2022.

3. FINDINGS

- (17) As for criterion (a) as referred to in recital (10), the evidence confirmed that the applicant is a genuine producer of biodiesel in Canada. It was established in 2019 following an asset purchase agreement by which it purchased an existing biodiesel production plant. Moreover, the investigation confirmed that the applicant only started its biodiesel production in August 2019. Consequently, the applicant did not exist at the time of the original investigation period and could not have exported biodiesel to the Union during that period (1 April 2009 to 30 June 2010). Hence, the applicant complied with criterion (a).
- (18) As for criterion (b), as referred to in recital (10), the Commission established, on the basis of the documents submitted by the applicant, that the applicant exported biodiesel to the Union in July 2021, i.e. after the original investigation period. The applicant therefore also complied with criterion (b).
- (19) As for criterion (c) referred to in recital (10), the Commission did not find any proof that the applicant purchased any biodiesel from the USA since its establishment in 2019 and/or was engaged in circumvention practices. To the contrary, the Commission could establish, on the basis of the submitted documents, that the applicant is a genuine producer of biodiesel in Canada.
- (20) Finally, the Commission also established, on the basis of the documents submitted by the applicant, that the applicant is not related to any exporting producer in the USA subject to the anti-dumping or countervailing measures.
- (21) Consequently, the Commission concluded that the applicant met the criteria pursuant to Article 13(4) of the basic anti-dumping Regulation, and Article 23(6) of the basic anti-subsidy Regulation. Therefore, the applicant should be exempted from the anti-dumping and countervailing duties in force in accordance with Implementing Regulation (EU) 2021/1266 and Implementing Regulation (EU) 2021/1267.
- (22) Accordingly, Implementing Regulations (EU) 2021/1266 and (EU) 2021/1267 should be amended.

4. MODIFICATION TO THE LIST OF COMPANIES BENEFITTING FROM AN EXEMPTION TO THE EXTENDED MEASURES

- (23) Given the findings referred to above, and pursuant to Article 4(2) of Implementing Regulation (EU) 2021/1266 and Implementing Regulation (EU) 2021/1267, respectively, the Commission concluded that the applicant should be added to the list of companies that are exempted from the anti-dumping and countervailing measures imposed by Implementing Regulation (EU) 2021/1266 and Implementing Regulation (EU) 2021/1267, respectively.
- (24) Interested parties were informed of the Commission's intention to exempt Verbio from the anti-dumping and countervailing duties imposed on biodiesel consigned from Canada and invited to comment thereupon. No comments were received.
- (25) The measures laid down in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

HAS ADOPTED THIS REGULATION:

Article 1

The table as set out in Article 2(1) of Implementing Regulation (EU) 2021/1266, is replaced by the following table:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada	C114
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108
Canada	Verbio Diesel Canada Corporation, Welland, Ontario, Canada	C600

Article 2

The table as set out in Article 2(1) of Implementing Regulation (EU) 2021/1267, is replaced by the following table:

Country	Company	TARIC additional code
Canada	BIOX Corporation, Oakville, Ontario, Canada	B107
Canada	DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada	C114
Canada	Rothsay Biodiesel, Guelph, Ontario, Canada	B108
Canada	Verbio Diesel Canada Corporation, Welland, Ontario, Canada	C600

Article 3

- (1) Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 3 of Implementing Regulation (EU) 2021/2157.
- (2) No definitive duty will be levied retroactively for the registered imports.

Article 4

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, 12 May 2022.

For the Commission
The President
Ursula VON DER LEYEN