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COMMISSION IMPLEMENTING REGULATION (EU) 2015/1518

of 14 September 2015

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 Council Regulation (EC) No 1225/2009

(OJ L 239, 15.9.2015, p. 69)

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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 Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 11(2) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 599/2009 [2], the Council imposed a definitive anti-dumping duty ranging from EUR 0 to EUR 198,0 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, at that time falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 20), ex 1518 00 91 (TARIC code 1518 00 91 20), ex 1518 00 99 (TARIC code 1518 00 99 20), ex 2710 19 41 (TARIC code 2710 19 41 20), 3824 90 91, ex 3824 90 97 (TARIC code 3824 90 97 87), and originating in the United States of America ('USA' or 'the country concerned'). The anti-dumping duty imposed by that regulation is hereafter referred to as 'the existing measures'.

(2) By Implementing Regulation (EU) No 444/2011 [3], following an anti-circumvention investigation, the Council extended the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports into the Union of biodiesel consigned from Canada, whether declared as originating in Canada or not,

[1] OJ L 343, 22.12.2009, p. 51.

[2] 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).

[3] 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).

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with the exception of those produced by the companies BIOX Corporation, Oakville and Rothsay Biodiesel, Guelph, Ontario, Canada. 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 United States of America.

1.2. **Measures in force in respect of other third countries**

(3) Outside the scope of this proceeding, anti-dumping measures on biodiesel are currently in force on imports from Argentina and Indonesia ([1]).

1.3. **Request for an expiry review**

(4) Following the publication of a notice of impending expiry ([2]) of the anti-dumping measures in force on the imports of biodiesel originating in the USA, the European Commission ('the Commission') received a request for review pursuant to Article 11(2) of the basic Regulation.

(5) The request was lodged on 9 April 2014 by the European Biodiesel Board ('the applicant' or 'EBB') on behalf of producers representing more than 25 % of the total Union production of biodiesel. The request was based on the grounds that the expiry of the measures would be likely to result in recurrence of dumping and recurrence of injury to the Union industry.

1.4. **Initiation of an expiry review**

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence exists to justify the initiation of an expiry review, the Commission announced on 10 July 2014, by a Notice of Initiation in the *Official Journal of the European Union* ([3]) ('the Notice of Initiation'), the initiation of an expiry review under Article 11(2) of the basic Regulation.

(7) On the same day, the Commission initiated an expiry review of the countervailing measures in force on the imports of biodiesel originating in the USA. This is a parallel but distinct proceeding which is dealt with by means of a separate Regulation.

([1]) Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ L 315, 26.11.2013, p. 2).

([2]) Notice of the impending expiry of certain anti-dumping measures (OJ C 289, 4.10.2013, p. 12).

([3]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of biodiesel originating in the United States of America (OJ C 217, 10.7.2014, p. 14).

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1.5. **Review investigation period and period considered**

(8) The investigation of likelihood of continuation or recurrence of dumping and injury covered the period from 1 July 2013 to 30 June 2014 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2011 to the end of the review investigation period ('the period considered').

1.6. **Interested parties**

(9) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known exporting producers in the USA and the USA authorities, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(10) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.7. **Sampling**

(11) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

(a) Sampling of Union producers

(12) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest representative production and sales volumes whilst ensuring a geographical spread. This provisional sample consisted of seven Union producers located in seven different Member States which accounted for almost 30 % of Union production of biodiesel. The Commission invited interested parties to comment on the provisional sample.

(13) One company located in Italy requested to be included in the sample. However, this company only started its activities by the end of 2013 after having acquired a biodiesel plant from another Italian biodiesel producer, which was included in the provisional sample. In the absence of historical data necessary for assessing relevant trends during the period considered and the fact that another Italian company was already included in the provisional sample it was decided not to include this company in the sample.

(14) The US National Biodiesel Board ('NBB') commented that the provisionally selected sample was different from the sample selected in the previous investigations concerning biodiesel and referred to two companies with sizeable production and sales volumes which were now not included. However, the two companies identified by NBB were either related to another

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company with higher sales volumes already included in the sample, or had lower sales volume than a provisionally selected company in the same Member State. Therefore, the inclusion of either of those two companies would not have changed the representativeness of the provisionally selected sample. The provisionally selected sample was therefore confirmed as a representative sample of the Union industry.

(15) Following disclosure, the US Government claimed that a sample representing 30 % of the Union industry could not be considered representative of the Union biodiesel industry as a whole and that the microindicators should have been analysed on a broader basis. The US Government refers to the WTO Appelate Body finding in the case *EC — Fasteners* in which a sample of 27 % was considered low in proportion to the total and would only constitute a major proportion in the case of fragmented industries.

(16) The Commission, contrary to the *Fasteners* investigation, defined for the purpose of this investigation, the Union industry as the entire industry and not only the sampled companies (recital (93) below). Furthermore, all macroindicators were assessed on the basis of the entire industry whilst only some microindicators were analysed at the level of the sampled companies. However, the overall analysis of the situation of the Union industry was based on an assessment of both micro- and macroindicators. In any event, the Union industry is considered to be a fragmented industry since it is composed of over 200 producers located across the Union of which most are small and medium enterprises. Therefore, the Commission concludes that the sample, representing 30 % of the Union industry, is representative and the claim is accordingly rejected.

(b) Sampling of importers

(17) To decide whether sampling would be necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(18) Only few unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

(c) Sampling of exporting producers in the USA

(19) To decide whether sampling would be necessary and, if so, to select a sample, the Commission asked all exporting producers in the USA to provide the information specified in the Notice of Initiation. In addition, the Commission asked the mission of the USA to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(20) 27 producers in the USA replied to the Commission but only 9 provided export and/or domestic sales data requested in Annex I to the Notice of Initiation for the purpose of sampling. None of them was exporting to the Union during the RIP. The Commission selected a sample of three exporting producers

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with the highest volume of domestic and export sales. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the USA, were consulted on the selection of the sample. No comments were made.

(21) None of the sampled producers provided any questionnaire reply within the deadline. On 7 October 2014 the Commission informed the three sampled exporting producers about this lack of reply.

(22) On 10 October 2014, one sampled exporting producer informed the Commission that it had chosen not to respond to the questionnaire. The other two sampled exporting producers requested various extensions to the deadline, which were granted, but no full replies were submitted.

(23) On 10 November 2014 the Commission sent a letter informing the three sampled companies about the intention to apply Article 18 of the basic Regulation and base the findings of the investigation on facts available. The USA authorities were also informed about this intention. The deadline for providing comments to the letter was 21 November 2014.

(24) By 21 November 2014, two of the sampled companies did not react at all and the other sampled company explained that the time limit was not sufficient for them to submit their answer.

(25) The Commission therefore concluded that none of the sampled exporting producers in the USA cooperated in the expiry review investigation. As a consequence, the Commission decided to apply the provisions of Article 18 of the basic Regulation and, accordingly, that findings, affirmative or negative, may be made on the basis of the facts available.

(26) The company Cargill Inc. noted that Regulation (EC) No 599/2009 had established a *de minimis* dumping margin and thus had imposed a 0 % definitive anti-dumping duty rate on US origin biodiesel produced and exported by them. They further noted that in line with the WTO Appellate Body findings in the report 'Mexico Rice' ([1]) an exporting producer not found to be dumping in an original investigation cannot be made subject to the expiry review of the anti-dumping measures.

(27) The company Cargill Inc. therefore requested to continue to be exempted from anti-dumping duties irrespective of the outcome of the expiry review. This request was accepted.

1.8. **Questionnaire replies and verification visits**

(28) The Commission sent questionnaires to the sampled Union producers and to the unrelated importers, traders and users that had made themselves known within the time limits set out in the Notice of Initiation.

([1]) Mexico — Definitive Anti-Dumping Measures on Beef and Rice, WT/DS 295/AB/R, 29 November 2005.

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(29) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

— Bio-Oils Huelva S.L., Huelva, Spain,

— Biopetrol Rotterdam BV, Rotterdam, the Netherlands,

— Diester industrie SAS, Rouen, France,

— Novaol S.R.L., Milan, Italy,

— Preol a.s., Lovosice, Czech Republic,

— Rafineria Trzebinia SA, Trzebinia, Poland,

— Verbio Vereinigte BioEnergie AG, Leipzig, Germany.

1.9. **Disclosure**

(30) On 3 June 2015, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to maintain the anti-dumping measures in force and invited all interested parties to comment. The comments made by the interested parties were considered by the Commission and taken into account, where appropriate.

(31) Following final disclosure NBB requested and was granted a hearing with the Hearing Officer in trade proceedings.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(32) The product under review is the same as in the investigation leading to the imposition of the existing measures (‘the original investigation’), i.e. 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 USA, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, ex 2710 20 11, ex 2710 20 15, ex 2710 20 17, ex 3824 90 92, ex 3826 00 10 and ex 3826 00 90 (‘the product under review’).

(33) Biodiesel is a renewable fuel used in the transport sector for diesel engines. However, conventional engines cannot function with pure biodiesel but a blend of mineral diesel and a limited content of biodiesel.

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(34) Biodiesel produced in the USA is predominantly 'fatty acid methyl ester' (FAME) derived from a wide range of vegetable oils (soybean oil, palm oil, rapeseed oil) and used frying oils, animal fats or biomass, which serve as a biodiesel feedstock. The term 'ester' refers to the trans-esterification of vegetable oils, namely, the mingling of the oil with alcohol. The term 'methyl' refers to methanol; the most commonly used alcohol in the process, although ethanol can also be used in the production process, resulting in 'fatty acid ethyl esters'.

(35) All types of biodiesel and the biodiesel in the blends, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product under investigation do not alter its basic definition, its characteristics or the perception that various parties have of it. In particular, from the perspective of the end-user of diesel fuel, it makes no difference if the blend available at the pump is made of one particular biodiesel feedstock.

2.2. **Like product**

(36) As in the original investigation, the biodiesel sold on the domestic market in the USA and the US biodiesel sold for export have the same basic physical and technical characteristics and uses. Similarly, the biodiesel produced and sold in the Union by the Union industry has the same basic physical and technical characteristics and uses as the product exported from the USA to the Union. Therefore, they are like products for the purposes of the present investigation within the meaning of Article 1(4) of the basic Regulation.

2.3. **Claims regarding product scope**

(37) The US Government (USG) claimed that diesel produced from biomass [1] is a category of products broader than the product under review. However, as set out in the Regulation imposing provisional countervailing duties in the original investigation [2], all types of biodiesel and biodiesel blends, including diesel produced from biomass, are considered to be biodiesel fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels. The reason is that biodiesel produced from biomass has the same or very similar basic physical and technical characteristics and uses as biodiesel produced from other sources. The finding in the original investigation was not challenged by any interested party and remains valid in this expiry review. Consequently, the Commission rejects this claim by the USG.

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[1] Under US legislation, 26 US Code, Section 45K(c)(3), the term 'biomass' means any organic material other than: (A) oil and natural gas (or any product thereof); and (B) coal (including lignite) or any product thereof.

[2] Commission Regulation (EC) No 194/2009 of 11 March 2009 imposing provisional countervailing duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 50), recital 20.

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3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

(38) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

3.1. **Preliminary remarks**

(39) Due to lack of cooperation from the selected sampled producers mentioned in recital (25) above, it was not possible to carry out an analysis based on verified data supplied by US producers. The Commission therefore made use of the following sources of information: the data provided by some US biodiesel producers at initiation stage in reply to the questionnaires for the purpose of the sampling, Eurostat, the request for an expiry review, subsequent submissions from the applicant, the US National Biodiesel Board, the websites of the US Energy Information Administration and the US Department of Energy, and the US International Trade Commission.

3.2. **Dumping of imports during the RIP**

(40) Following the imposition of measures in 2009, imports of biodiesel from the USA to the Union dropped to almost zero, with only a very small quantity exported in 2013 and during the RIP. In these circumstances, it was not considered relevant to assess the level of dumping in the RIP. It can therefore be concluded that there was no continuation of dumping during the RIP.

3.3. **Evidence of likelihood of recurrence of dumping**

(41) The Commission analysed whether there was evidence of likelihood of recurrence of dumping should the measure lapse. In particular, the following elements were analysed: the relationship between prices of the product produced and sold in the Union and in the USA, the relationship between export prices to third countries and prices in the USA, the relationship between export prices to third countries and the price level in the Union, the unused capacities and circumvention and absorption practices.

3.3.1. *Relationship between prices of the product produced and sold in the Union and in the USA*

(42) In the absence of cooperation from the US biodiesel producers, the Commission services made use of three sources of information for establishing the domestic sales price of biodiesel in the US during the RIP: (i) the replies to the questionnaire sent out at initiation stage for the purpose of sampling, submitted by a number of US biodiesel producers at initiation stage; (ii) information provided by the NBB based on information gathered by a market surveyor named ‘Jacobsen’; and (iii) information provided by the applicant based on information gathered by the Oil Price Information Service (OPIS).

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(43) The data from these three sources include different levels of trade prices and incoterm conditions. However, the values are very close to each other. The average of the values from these three sources is USD 1 196,93 per metric tonne. At the euro/dollar average exchange rate during the RIP (1 EUR = 1,356 USD), this amount corresponds to a US domestic sales price of EUR 883 per metric tonne ([1]).

(44) The average ex-works price of biodiesel sold in the Union by Union producers during the RIP, as shown in Table 8 below, was EUR 905 per metric tonne (USD 1 227,18).

(45) In order to re-enter the Union market, the US producers would need to sell at a lower price than EUR 905 per metric tonne. Their final price should also cover the ocean freight and insurance costs and the existing customs duty (6,5 %) applicable to biodiesel. According to data obtained during the investigation, this would amount to approximately EUR 100 per metric tonne. The Commission based this amount on the amount for customs duties, transport and freight, as calculated by the NBB (around EUR 94) and rounded it up to EUR 100 to cover also some additional post-importation expenses.

(46) As a consequence, should the US producers resume exports to the EU, they would need to do so at an ex-works price (less than EUR 805 per metric tonne) which would be lower than their domestic sales price in the US, thus at a dumped price. On the basis of the circumstances described in more detail in recitals (63) and (71) concerning respectively the export prices to third countries and the spare capacity, it is likely that the US producers would resume exports to the Union if the measures in force were allowed to lapse, as this would allow them reducing the unit costs of production, as explained in more detail in recital (72) below.

(47) Following final disclosure, the NBB questioned the accuracy of the average domestic sales price established by the Commission and reminded that in one of its earlier submissions a lower value (EUR 789,36 per metric tonne) was indicated, based on the prices made available by the US Department of Energy.

(48) The Commission rejects this claim for the following reasons:

(49) As regards the average price indicated by the NBB, it cannot be regarded as an accurate basis, because it was a retail price and not an ex-factory price. More specifically, the NBB provided an average monthly retail price (at the pump) for biodiesel in the USA in July 2014, measured in gasoline gallons equivalent (GGE) and using the exchange rate of only one point in time, i.e. 19 September 2014.

(50) As regards the average price calculated by the Commission, it is a reasonable value taking into account that it was calculated making use of the best fact available in the absence of cooperation from the US producers. It is an average of the prices declared by some US producers at initiation stage, the prices collected by the surveyor 'Jacobsen' as provided by the

([1]) Due to a typographical error, the Disclosure Document indicated incorrectly an amount of EUR 884.

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NBB itself and the prices collected by OPIS as provided by the EBB. It was a simple average in the absence of information on quantities which would allow calculating a weighted average. The three values were very similar though. The incoterm conditions and level of trade were not known and could not be taken into account. However, the OPIS prices were adjusted to take into account reasonable transport costs within the USA. In the light of the significant difference between domestic and export price, any adjustment for incoterm conditions and level of trade would have not changed the conclusion that if US producers want to resume sales to the Union, they would have to sell at dumped prices.

(51) The NBB also challenged the amount of EUR 100 per metric tonne used to calculate a reliable average export price starting from the average Union price of biodiesel and suggested using EUR 110,49 instead. As mentioned in recital (45) above, the Commission used the amounts suggested by the NBB for customs duties, transport and freight. The Commission only used a lower amount for the additional post importation costs than the EUR 16,69 as claimed by the NBB, because the NBB did not demonstrate that the amount for post importation should be 2 % of the CIF frontier value. In any event, the difference between the Commission's estimation and the one from the NBB is marginal and does not change the conclusion on the likelihood of dumping, also taking into account that no precise dumping calculations were required in this respect.

(52) The NBB claimed that, like in the original investigation, an adjustment for physical difference should have been granted to take into account that the main feedstock used to produce biodiesel in the US is soya beans whereas in the Union the main feedstock used is rapeseed which has a higher quality and demands a price premium.

(53) This claim must be rejected. In the original investigation the adjustment was granted on the basis of a comparison of verified data from US producers and Union producers. In the absence of cooperation from the US producers in the present expiry review, the Commission could firstly not establish that an adjustment should be granted. Secondly if any adjustment were to be granted, the Commission could not establish the level of such an adjustment. The circumstances prevailing at the time of the original investigation have changed, in particular the mix of the feedstock used both in the EU and in the USA to produce biodiesel is no longer the same. Also, the NBB claimed an adjustment of 10 %, but has not substantiated this level of the adjustment.

(54) The NBB and the US Government claimed that since the US domestic price is higher than the likely export price to the Union, US producers would increase their domestic sales rather than exporting to the Union, in particular in view of the increased consumption in the US.

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(55) This claim is unfounded and should be rejected. The consumption in the USA increased in the past years, mainly due to Government policies such as incentives and mandatory targets set out in the Renewable Fuels Programme and subsidy schemes to promote the production and blending of biodiesel. However, based on the data provided by the NBB itself, the biodiesel consumption in the USA in 2014 decreased compared to 2013. There is no evidence that consumption will increase in 2015 and 2016. On the contrary, publicly available information ([1]) suggests that the targets for mandatory use of renewable fuels in the USA will remain stable in the years to come. As a consequence, the current consumption level in the USA is more likely to remain stable than to increase. As there is an excess capacity in the USA (see recitals (69) and following below), US producers would still have an incentive to export to the Union even if they sell at a lower price than the domestic price but still cover their variable costs.

(56) The NBB claimed that the Commission should have explained how an increased production volume would decrease the costs of production of the US producers. In this respect, it should from the outset be stated that due to the lack of cooperation, the Commission could not make a precise calculation regarding the impact of higher production volumes on the costs of US producers. However, it is clear from an economic point of view that if fixed costs are apportioned to a larger production volume, the unit cost of production decreases. This holds true even if in the production of biodiesel the main part of the costs are variable and depend on the raw materials used, as alleged by NBB. The fixed costs still need to be allocated to the total production volume. Indeed, information obtained from the Union industry showed that the cost of feedstock is a major part of the cost of production, but the exact percentage depends on the feedstock used, to what extent a company is vertically integrated and the SG&A cost of a company. In these circumstances, the Commission could reasonably assume that an increased production would decrease the cost of production of the US producers. This would only be different in case the export price would be so low that it would not even cover the price of feedstock used, but the NBB did not provide any comments that would support such scenario.

3.3.2. *Relationship between export prices to third countries and prices in the USA*

(57) Another element that justifies the conclusion that dumping is likely to recur is based on the analysis of the pattern of US biodiesel exports to third countries during the RIP. The Commission consulted the database of the United States International Trade Commission and extracted the quantities and

([1]) See for example: http://biodiesel.org/news/news-display/2014/05/14/biodiesel-producers-hit-hard-by-policy-uncertainty, accessed on 6 July 2015.

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values of the export of biodiesel under the HTS code 382600 for the RIP. The export quantities (in metric tonnes) to all countries (EU included) amount to 567 018 tonnes. The average value per metric tonne during the RIP was 753,34 EUR free alongside ship. The Commission calculated an average sales price in US dollars per metric tonne and compared it with the average domestic price in the USA (established as explained in recital (42) above). The findings are summarised below:

Table 1

US export volumes and export prices during the RIP

Countries of destination	Export quantities (in metric tonnes)	Percentage of exports to all countries	Average value (USD) per metric tonne	Average value (EUR) per metric tonne	Dumping as a percentage of the export price
Total Gibraltar ([1])	76 266	13	753,19	555,45	59
Total Canada	247 959	44	1 167,33	860,86	3
Total Australia	4 267	1	1 019,77	752,04	17
Total Malaysia	103 773	18	891,44	657,41	34

([1]) Gibraltar is not part of the Customs Unions and imports of products into Gibraltar are not considered as release of products in free circulation in the Union.

(58) The table shows that US producers appear to be currently selling to third countries at dumped prices, with export prices lower than domestic prices in the range from 3 % to 59 %. Therefore the Commission concluded that since US producers are currently selling to third countries at dumped prices, it is likely that they would export to the EU, by diverting some of their current exports to other markets, also at dumped prices.

(59) Following final disclosure, the NBB questioned the accuracy of export data as the HTS code used for assessing the volume of exports (38 26 00) includes other products and therefore the export price cannot be compared to the domestic price of biodiesel.

(60) The Commission used this code because the US Government itself stated in its second supplementary questionnaire response dated 19 December 2014 that that code had been used from 2012 onwards in order to provide accurate statistical information on exports of US biodiesel. Although this code overstates the value of the product concerned exported, it does so to a far lesser degree than the codes used in the past. The US authorities concluded that that code provided a relatively accurate representation of the export value.

(61) The NBB claimed that the domestic prices calculated by the Commission cannot be compared with the export prices indicated in the ITC database and accordingly the dumping margins calculated by the Commission cannot be used.

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(62) In an expiry review, no new dumping margins need to be calculated. In the present case, following the imposition of measures, dumped exports came to a halt, so the analysis focused on the likelihood that dumped exports will resume. In the absence of cooperation from US producers, the Commission made use of facts available. In this scenario, the export prices to third countries are relevant and can be used as an indicator to assess what will happen once measures lapse. More specifically, the comparison between domestic prices and export prices to third countries does not aim to calculate exact dumping margins but give an indication of the likelihood of recurrence of dumping should existing measures be allowed to lapse.

3.3.3. *Relationship between export prices to third countries and the price level in the Union*

(63) The EU market is an attractive market of US exports of biodiesel. Based on the database of the United States International Trade Commission referred to in recital (57) above, during the RIP the average export price to all destinations was USD 1 021,52 (EUR 753,34) per metric tonne. The highest average export price was to Canada (USD 1 167,33 or EUR 860,86 per metric tonne) and the lowest average export price was to Gibraltar (USD 753,19 or EUR 555,45 per metric tonne).

(64) This average export price is lower than the average price of biodiesel sold in the Union by Union producers during the RIP (EUR 905 per metric tonne). Even if US producers would have to sell at a price below EUR 905 per tonne to penetrate the Union market, they would still have an incentive to redirect some of the current exports to third countries towards the Union market, as it is more attractive than some other third countries' markets.

(65) The NBB and the US Government claimed that the current US export sales to third countries would not be diverted to the Union because the single largest export market is Canada where prices are higher than the ex-works price to the Union.

(66) The Commission referred however to ‘some of the current export sales’ and not all of them. The Commission did not claim that US producers would stop exporting to Canada and re-route those sales to the Union. Indeed, Canada could also be regarded as an attractive market for US producers, however it has a limited size compared to the Union market ([1]), which remains the biggest biodiesel market in the world.

(67) The NBB claimed also that current exports to Malaysia would not be diverted to the Union because consumption is growing there and there are no customs duties to be paid on imports of biodiesel.

([1]) Consumption of biodiesel in Canada is to reach slightly above 300 000 tonnes in 2015. See example: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Biofuels%20Annual_Ottawa_Canada_11-24-2014.pdf, accessed on 6 July 2015.

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(68) However, based on the US average exports prices to Malaysia as they appear in the ITC database, it appears that selling to the Union would be more profitable for the US producers than selling to Malaysia, even if adding up ordinary customs duties. As shown in Table 1 above, during the RIP export prices to Malaysia were significantly lower than prices in the Union. Also, consumption in Malaysia might be growing, but so might production in Malaysia, which is in particular based on palm oil. In addition, it can reasonably be expected that the neighbouring country of Indonesia, which has a significant biodiesel production, will increase export to Malaysia in case consumption will grow. Therefore this claim should be rejected.

3.3.4. *Unused capacities*

(69) The significant spare capacity of the US producers presents an incentive to increase production and sell biodiesel at dumped prices to the EU market. Due to the lack of US producers' cooperation, the Commission established the US production capacity on the basis of the available information on the websites of the US Environmental Protection Agency (EPA) and of the US Energy Information Administration (EIA).

(70) US biodiesel producers must report to these two authorities (respectively on a yearly and a monthly basis) their existing and planned production capacity, as well as their production, input, stocks and sales of biodiesel.

(71) On the basis of EIA's data, the US biodiesel producers' capacity during the RIP was 7 128 000 tonnes. This volume is very close to the volume provided by the NBB based on the information submitted by its members to the EPA, that is 6 963 000 tonnes.

(72) The US actual production of biodiesel during the RIP was 4 450 000 tonnes (EIA's data), which corresponds to a capacity utilisation of 62,4 % and a spare capacity of 37,6 %, that is 2 678 000 tonnes. This spare capacity is likely to be used to supply the Union market should measures be allowed to lapse. Indeed, the US producers can easily increase their production and export it to the EU with the economic benefit of the increase in capacity utilisation ratio and reduction of unit cost of production. The release in the Union market of the US spare capacity would have a significant impact as it amounts to nearly 22 % of the Union consumption during the RIP.

(73) In this respect, the NBB submitted a number of comments. First, the NBB pointed out that the US real production capacity would be lower than that considered by the Commission. Indeed, according to the NBB, a number of plants in the US, albeit registered, are actually inactive and therefore the real production

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capacity is 5 409 000 tonnes. The NBB also reported a higher production of biodiesel during the RIP, amounting to 5 084 000 tonnes. As a consequence, the NBB claimed that the capacity utilisation is around 94 % and that there is little spare capacity to be used to export to the EU if measures were repealed.

(74) This claim was rejected. The data provided by the NBB could not be reconciled with officially available data. Biodiesel producers in the USA are obliged to submit to EIA on a monthly basis a form (EIA-22M 'Monthly Biodiesel Production Survey') indicating, among other data, the annual production capacity and their operating statuses, such as active, temporarily inactive or permanently ceased operations. Since January 2013, the registered capacity varied slightly from one month to another but was overall rather stable.

(75) In addition, biodiesel producers in the USA are obliged to submit to EPA on an annual basis, among other information, the type, or types, of renewable fuel expected to be produced or imported and the existing and planned production capacity.

(76) The registered capacity that US biodiesel producers have declared is thus updated regularly and is therefore considered as an accurate source. Even if the registered capacity is currently unused or idle, it must be taken into account for the calculation of the spare capacity which is available to increase production and exports.

(77) Moreover, the production capacity values provided by the NBB already excluded the permanent shuttered capacity, as acknowledged in their submission. Plants which are not permanently shuttered can by definition start production again if future market conditions change (such as the opening up of the Union market). The 'likelihood-of-recurrence' test in an expiry review requires a forward looking approach about what could happen in the future if measures were allowed to lapse, and not a simple stock-taking of the situation during the RIP.

(78) The Commission considers therefore that the current registered capacity constitutes an accurate basis for calculating the total US production capacity and spare capacity and rejects the NBB claim.

(79) Following final disclosure, the NBB maintained that the production capacity should not take into account idle capacity even if this capacity was not notified to the US authorities as dismantled or permanently shuttered.

(80) However, following the EIA instructions quoted by NBB, the *'annual production capacity [is] the quantity of biodiesel that a plant can produce in a calendar year, assuming normal downtime for maintenance. It includes the capacity of idle plant until the plant is dismantled or abandoned'*. It is evident

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from the above that EIA takes into account all possible plants which potentially can become active again. Consequently, contrary to what NBB argues, plants which are not dismantled or permanently shuttered can by definition start production again, if future conditions change.

(81) The Commission considered therefore that the current registered capacity constituted an accurate basis for calculating the total US production capacity and spare capacity.

(82) The NBB also claimed that the US biodiesel industry is not designed to operate as an exporting industry, as most US biodiesel facilities produce less than 15 000 000 gallons (55 000 metric tonnes) per year. Allegedly, it would not be economically feasible to stock several weeks of biodiesel of production for a single export shipment.

(83) This claim was rejected as well. The US biodiesel industry can export and before imposition of the measures in force, the US producers were exporting significant quantities of biodiesel to the Union market, up to 1 137 000 tonnes during the investigation period of the initial investigation (1 April 2007 to 31 March 2008). This shows that there are US producers with sufficient production capacity to be able to export. The US producers without sufficient individual production capacity for a shipment to the Union will continue serving the domestic market and traders can put together the output of several plants and export it.

(84) In conclusion, the US biodiesel industry has a significant spare capacity and has therefore a strong incentive to resume exports to the EU market should the existing measures be allowed to lapse.

3.3.5. *Circumvention and absorption practices*

(85) As mentioned in recital (2), the anti-dumping measures imposed in 2009 were found to be circumvented by means of transhipments via Canada and by a change in the composition of the blend. The existence of such practices shows the interest of some US producers to enter the Union market, even after the imposition of measures, and is therefore considered as an indication of the likelihood of future dumping practices.

(86) Following final disclosure, the NBB claimed that those events occurred four years before the RIP and cannot be used to draw any conclusion in the present case.

(87) The Commission maintained that the existence of past practice put in place by the same market operators is not decisive as such, but could still be considered as an indication of the strong interest that US producers have in penetrating the Union market.

3.3.6. *Other elements*

(88) In the RIP, the US production of biodiesel (4 450 000 tonnes) was lower than the consumption (4 896 000 tonnes). As a consequence, the USA was importing more biodiesel than it was exporting. The reason for that could be found in the uncertainty linked to the targets for mandatory biodiesel production under the Renewable Fuel Standard Programme (1,28 billion gallons, corresponding to 4 238 000 tonnes in 2014, unchanged

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compared to 2013) and the possibility for imported biodiesel to participate in the Renewable Fuel Standard Programme and to claim the US biodiesel tax credit when it is in effect. During the RIP the total imports amounted to 1 072 000 tonnes, and the total exports to 567 000 tonnes. However, if the available production capacity was not used to satisfy the domestic demand during the period considered it is unlikely that such available production capacity would be used in the future for the same purpose. It has been established that in the RIP the US production capacity (7 128 000 tonnes) was significantly higher than the domestic consumption. This means that if export market opportunities open up, the US producers will have an incentive and are likely to use their spare capacity. If they could have used the spare capacity to satisfy the domestic consumption, they would have already done so.

(89) In this context, it should be noted that the Union market is very attractive as it is the biggest in the world and there are significant Union and national incentives for biodiesel consumption. Thus, it would be convenient for US producers to utilise their spare capacity to the full extent and also to divert some of their export sales to other less profitable third countries into the Union market.

(90) Following final disclosure, the NBB argued that the fact that during the RIP US consumption of biodiesel was higher than production shows that the US producers do not have spare capacity which could be used to penetrate the Union market, should measures be allowed to lapse.

(91) The Commission considered that the established spare capacity in the USA, which could be used to satisfy the entire US consumption but at the moment it is not used for that purpose, would in all likelihood be used to satisfy other markets where demand exists and in particular the Union market where US exporting producers are currently not present. The Commission stressed that the production capacity is significantly higher than consumption in the USA and, accordingly, unused capacity is available for exports to the Union if the measures in force were allowed to lapse.

3.3.7. *Conclusion on the likelihood of a recurrence of dumping*

(92) In light of the significant spare capacity of the US industry, combined with the attractiveness of the Union market in terms of size and sales price, in particular with regard to the price level of US exports to third countries, and the records of past circumvention practices, the Commission concluded that dumped imports from the USA are likely to recur if the measures in force were allowed to lapse.

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4. INJURY

4.1. Definition of the Union industry and Union production

(93) The like product was manufactured by around 200 producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(94) The total Union production during the review investigation period was established at almost 11 600 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information provided in the complaint and data collected from Union producers during the investigation. As indicated in recitals (12)-(13) above, seven Union producers were selected in the sample representing almost 30 % of the total Union production of the like product.

4.2. Union consumption

(95) The Commission established the Union consumption on the basis of the volume of the total Union production minus exports, plus imports from third countries. Import and export volumes were extracted from Eurostat data.

(96) Union consumption developed as follows:

Table 2

Union consumption

	2011	2012	2013	RIP
Total Union consumption (metric tonnes)	11 130 119	11 856 626	11 382 324	12 324 479
Index	*100*	*107*	*102*	*111*

Source: Data from Union industry, Eurostat

(97) Based on the above, the Union consumption of biodiesel increased by 11 % over the period considered.

4.3. Imports of the product under review from the country concerned

4.3.1. *Volume and market share of the imports from the country concerned*

(98) As mentioned above (recital (40)) imports of biodiesel from the USA to the Union have, according to Eurostat data, dropped to almost zero since the imposition of measures in 2009.

(99) Imports into the Union from the country concerned and market share have developed as follows:

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Table 3

Import volume and market share of the USA

	2011	2012	2013	RIP
USA (metric tonnes)	2 442	803	7	13
Index	*100*	*33*	*0*	*1*
Market share	0	0	0	0

Source: Eurostat

4.3.2. *Prices and price undercutting*

(100) During the review investigation period the imports of biodiesel to the Union from the USA were negligible and could not provide a meaningful basis for calculating undercutting.

(101) An analysis was therefore made between the average price of biodiesel produced and sold in the Union by the Union industry and the average export price of biodiesel to third countries from the USA in the review investigation period based on statistical data from the United States International Trade Commission. As mentioned above (recital (63)), the average export price to all countries was around EUR 753 per metric tonne FAS (free alongside ship). In order to calculate a likely and reasonable Union export price it would be necessary to add costs for transport and insurance as well a customs duty of 6,5 % and post-importation costs to this average export price, which are estimated to around EUR 100 per metric tonne (see recital (45)) above. It follows that an estimated export price to the Union would be undercutting the Union prices, which were EUR 905 during the review investigation period.

(102) The NBB claimed that the Commission failed to explain why it used the average US export prices to third countries when establishing a likely Union export price rather than using the higher export price to Canada. It also contends that the Commission failed to explain the basis for the EUR 100 adjustment to the estimated export price to the Union and did not take into account post-importation costs as well as alleged price differences due to different feedstock. As a result the undercutting analysis would be flawed.

(103) The investigation demonstrated, as described in recital (57) above, that US export prices vary significantly depending on destination. Therefore, in the absence of cooperation from US producers, in order to establish a reasonable and likely export price to the Union, the Commission established that price on the basis of an average to all export destinations. To simply use the highest export price, as claimed by NBB, would not have been an appropriate method in the same way as using the lowest export price would have been inappropriate. With regard to the components and source of the EUR 100 adjustment, including post-importation costs and price differences due to

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feedstock, the NBB put forward essentially identical claims with regard to the calculations relevant for dumping. For the reasons mentioned above in recitals (51) and (53) these claims are rejected also with respect to the undercutting analysis.

4.3.3. *Imports from other third countries*

(104) The volume of imports from other third countries developed over the period considered as follows:

Table 4

Imports from third countries

	2011	2012	2013	RIP
Malaysia (metric tonnes)	16 622	36 543	211 430	314 494
Indonesia (metric tonnes)	1 087 517	1 133 946	394 578	204 086
Argentina (metric tonnes)	1 422 142	1 475 824	425 239	153 607
Others (metric tonnes)	139 580	153 529	177 889	206 592
Total (metric tonnes)	2 665 861	2 799 842	1 209 136	878 779
Index	*100*	*105*	*45*	*33*
Market share	24,0 %	23,6 %	10,6 %	7,1 %
Index	*100*	*99*	*44*	*30*
Average price EUR/tonne)	927	932	779	786
Index	*100*	*100*	*84*	*85*

Source: Eurostat

(105) The volume of imports of biodiesel from third countries other than the USA has decreased significantly over the period considered which is reflected in a similar decrease in market share. The decrease in import volumes from 2013 coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina. The average price has also decreased by 15 % during the same period. The price trend is similar to the trend for the Union industry prices on the Union market (Table 8 below) and can mainly be attributed to a decrease in feed stock prices. Albeit the price levels are approximately 13 % below the average Union price, the market share of these imports is low and does not have any significant impact on the Union industry.

4.4. **Economic situation of the Union industry**

4.4.1. *General remarks*

(106) In accordance with Article 3(5) of the basic Regulation, an examination of all relevant economic indicators having a bearing on the state of the Union industry during the period considered was carried out.

(107) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on

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the basis of data related to all Union producers and the micro-economic indicators on the basis of verified data from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(108) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

(109) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(110) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2011	2012	2013	RIP
Production volume (metric tonnes)	8 547 884	9 138 558	10 528 886	11 596 824
Index	*100*	*107*	*123*	*136*
Production capacity (metric tonnes)	16 072 000	16 190 288	16 997 288	16 746 869
Index	*100*	*101*	*106*	*104*
Capacity utilisation	53 %	56 %	62 %	69 %
Index	*100*	*106*	*116*	*130*

Source: Data provided by EBB (the applicant)

(111) Whilst the production capacity remained relatively stable during the period considered (+ 4 %), the production volumes increased significantly as from 2012 until the end of the review investigation period. This increase in production volumes is partly explained by the increase in Union consumption for the same period but also coincides with the imposition of anti-dumping measures on imports of biodiesel from Indonesia and Argentina, which clearly had a positive effect on the Union industry production volumes.

(112) As a result of the stable production capacity and increased production volumes, the capacity utilisation increased over the period considered by 30 % and was at 69 % by the end of the review investigation period.

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(113) NBB claims that the non-confidential questionnaire responses from some of the sampled companies show high capacity utilisation rates ranging from 78 % to at least 93 %. It is claimed therefore that the lower average capacity utilisation rate of the whole industry is due to structural factors rather than imports. In these circumstances, the capacity utilisation should allegedly not be taken into account as an indicator showing that the Union biodiesel industry is still in a process of recovering from past dumping.

(114) This claim cannot be accepted. Capacity utilisation is only one of many macroindicators that the Commission considers when analysing the overall situation of the Union industry. The fact that some companies in the sample may have higher utilisation rates is normal since macroindicators are based on the weighted average of the entire Union industry. That some biodiesel producers in the Union have recovered faster, or to a higher degree, than others, particularly in a highly fragmented industry, does not render this indicator superfluous for the overall assessment of the situation of the Union industry.

4.4.2.2. Sales volume and market share

(115) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2011	2012	2013	RIP
Sales volume on the Union market (metric tonnes)	8 497 073	8 863 191	9 741 548	10 966 576
Index	*100*	*104*	*115*	*129*
Market share	76,3 %	74,8 %	85,6 %	89,0 %
Index	*100*	*98*	*112*	*117*

Source: Data provided by EBB (the applicant)

(116) Union industry sales volumes have increased significantly and in line with its increased production during the period considered. As a result also its market share on the Union market has increased from 76 % at the start of the period considered to 89 % at the end of the review investigation period. The positive evolution of sales volumes and market share shows that current anti-dumping and anti-subsidy measures have had a positive effect for the Union industry.

4.4.2.3. Growth

(117) Union consumption increased by 11 % over the period considered whilst both production volumes and sales increased by around 30 %. Also capacity utilisation increased by some 30 % while the capacity remained relatively stable with only a small increase. At

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the same time employment has increased (Table 7 below) whilst the level of investment has decreased (Table 11 below) during the period considered. Overall, it can be concluded that the Union industry is in a period of growth.

4.4.2.4. Employment and productivity

(118) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2011	2012	2013	RIP
Number of employees	2 123	2 125	2 351	2 326
Index	*100*	*100*	*111*	*110*
Productivity (metric tonne/ employee)	4 021	4 301	4 479	4 986
Index	*100*	*107*	*111*	*124*

Source: Data provided by EBB (the applicant)

(119) The number of employees in the Union biodiesel industry remained stable in the beginning of the period considered but increased thereafter by 10 % from 2012 to the end of the review investigation period. This trend is fully in line with the trends for other injury indicators, such as production volumes and sales, and is an indication of the on-going recovery from past dumping and subsidisation that the Union industry is currently experiencing.

(120) Since the increase in employment is proportionally smaller than the increased production of biodiesel, the productivity per employee has improved accordingly, by almost 25 % during the period considered, indicating that the Union industry is becoming a more efficient industry.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

(121) As mentioned above in recital (40) imports of biodiesel from the USA virtually ceased after the imposition of measures in 2009 and there was no dumping during the review investigation period. Therefore, the magnitude of dumping cannot be assessed. However, the analysis of the injury indicators shows that the measures in place against the USA and the subsequent measures imposed against imports from Argentina and Indonesia have had a positive impact on the Union industry which is deemed to be on a recovering curve from past dumping.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(122) The weighted average unit sales prices (ex-works) of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

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Table 8

Sales prices in the Union

	2011	2012	2013	RIP
Average unit sales price in the Union (EUR/ metric tonne)	1 105	1 079	964	905
Index	*100*	*98*	*87*	*82*
Unit cost of production (EUR/metric tonne)	1 107	1 153	969	868
Index	*100*	*104*	*88*	*78*

Source: Verified data from sampled Union producers

(123) The average sales price in the Union has decreased steadily over the period considered whilst the unit cost of production has followed a similar trend. Since biodiesel is traded as a commodity, the Union industry has not been able to maintain a higher sales price but rather to decrease the price in line with reduced costs of production. Therefore, the Union industry has not been able to fully reap the benefits of lower raw material costs. On the other hand, the cost of production per unit has decreased slightly more than the average unit price which indicates an improved efficiency by the Union industry.

4.4.3.2. Labour costs

(124) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour cost per employee

	2011	2012	2013	RIP
Average labour costs per employee (EUR)	60 866	59 081	60 802	61 807
Index	*100*	*97*	*100*	*102*

Source: Verified data from sampled Union producers

(125) The average labour cost per employee has remained stable throughout the period considered.

4.4.3.3. Inventories

(126) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2011	2012	2013	RIP
Closing stocks (metric tonnes)	84 734	118 256	92 825	91 202

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	2011	2012	2013	RIP
Index	*100*	*140*	*110*	*108*
Closing stocks as a percentage of production	4	5	4	3
Index	*100*	*125*	*100*	*75*

Source: Verified data from sampled Union producers

(127) Stocks have remained relatively stable at a normal level during the period considered.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(128) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2011	2012	2013	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,0	– 1,4	1,1	3,8
Index	*100*	*– 70*	*55*	*190*
Cash flow (EUR)	67 930 517	1 004 296	135 656 898	66 832 681
Index	*100*	*1*	*200*	*98*
Investments (EUR)	12 122 366	9 859 293	9 133 725	8 314 180
Index	*100*	*81*	*75*	*69*
Return on investments (% on net sales)	14,0	– 14,2	12,5	44,2
Index	*100*	*– 101*	*89*	*315*

Source: Verified data from sampled Union producers

(129) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability has increased from 2,0 % in 2011 to 3,8 % by the end of the review investigation period. The profitability dropped however in 2012 to a loss (– 1,4 %) which was most likely due to the effect of significant amounts of dumped imports from Indonesia and Argentina, which replaced the imports that had previously been originating in the USA.

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(130) The net cash flow is the ability of the Union producers to self-finance their activities. Whilst no clear trend can be established during the period considered, the sampled companies maintained over the period a positive cash flow.

(131) During the period considered investments have decreased. However, in view of the positive cash-flow and the significant increase on the return of investments, as shown in the table above, there are no indications that Union industry would have encountered difficulties in raising capital or make further investments, should such investments have been required during the period considered.

(132) NBB claims that a profitability of 3,8 % is inconsistent with their own calculations, which were based on data from the non-confidential versions of the questionnaire replies of the sampled EU producers and indicated a profit margin of 8,5 %.

(133) The Commission analysed this claim and found that NBB reached a different figure on the basis of a methodology/calculation which was flawed for several reasons. First, their calculations of the profitability for the RIP was not based on questionnaire replies as alleged but on sampling data which, however, does not contain information relating to the RIP but to a different period. Second, the cost of production that NBB used to calculate the profitability was based on a cost of production for a different sample of companies used in another investigation and cannot therefore simply be transposed to this investigation. Finally, the Commission established the average profit margin of the sampled companies on the basis of reliable and verified data of those companies. Therefore, NBB's claim is rejected.

4.4.4. *Conclusion on injury*

(134) The analysis of the economic indicators shows that production and sales volumes have increased during the period considered whilst the Union consumption has only increased to a lesser extent. As a result the Union industry has increased its market share on the Union market. At the same time both sales prices and the cost of production have decreased at similar levels. This has prevented the Union industry from fully benefitting from the increased sales volumes despite a significant reduction of imports from third countries.

(135) On the other hand, profitability has remained low during the period considered and the Union industry even suffered losses in 2012. Even the profits that were achieved during the review investigation period, just under 4 %, are significantly below the profit that the Union industry should reasonably achieve under normal market conditions. Also, the Commission recalls that in the original investigation leading to the imposition of the existing measures the Council established the (target) profit that the Union industry should reasonably obtain in the absence of dumping at 15 % ([1]). In a subsequent investigation concerning imports of

([1]) Regulation (EC) No 599/2009, recitals 181-183.

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biodiesel originating in Argentina and Indonesia, the profit level that the Union industry should reasonably expect to achieve in the absence of dumping were, however, slightly revised downwards mainly due to increased competition on the Union market and the maturity of the biodiesel industry in the Union and was established at 11 % ([1]).

(136) Several of the economic indicators relevant for the analysis of the current state of the Union industry show a positive trend and hence indicate that the anti-dumping measures in place have had a positive effect on the Union industry. However, the profit level of the Union industry is still very low and significantly below the target profit as established in previous investigations. Moreover, the level of investment is low and also decreased during the period considered by 30 % and the capacity utilisation, albeit increasing, is still below 70 % compared to an utilisation rate around 90 % when dumped imports were absent from the Union market (2004-2006) and the Union industry was considered to be in a healthy situation ([2]).

(137) Based on an overall analysis of all economic indicators, the Commission has concluded that Union industry has not yet fully recovered from the effects of past dumping. It is still in an economically and financially fragile situation and the current positive trend could easily be reverted should dumped imports from the USA recur in significant volumes.

5. LIKELIHOOD OF RECURRENCE OF INJURY

(138) To assess the likelihood of recurrence of injury to the Union industry should the existing measures be allowed to lapse, the Commission analysed the likely impact of imports from the USA on the Union market and on the Union industry pursuant to Article 11(2) of the basic Regulation. In particular, the Commission analysed the likelihood of recurrence of dumped imports, the volumes and the likely price levels thereof, spare capacity, the attractiveness of the union market and pricing behaviour of US producers.

(139) As concluded above (recital (92)), it is likely that dumped imports from the USA would recur should the existing measures be allowed to lapse. The Commission has established that producers of biodiesel in the USA are currently dumping at other third country markets at price levels that are below the Union prices. Since the Union prices are slightly higher than those in other third country markets it is likely that at least some of those exports may be redirected to the Union should the existing measures lapse.

([1]) Implementing Regulation (EU) No 1194/2013, recitals 202-208.
([2]) Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

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(140) The Commission has established that US producers have a large spare capacity amounting to around 2 678 000 tonnes equivalent to around 22 % of the total Union consumption.

(141) The spare capacity available in the USA is not likely to be absorbed by its domestic market. Already today, despite sufficient capacity, US producers are not supplying the full demand on the US market. It is also unlikely that the existing spare capacity would be used to increase exports to third countries other than the Union. Currently, as described in detail in recitals (42)-(63) above, the US export prices to third countries are on average 15 % below the average domestic price on the US market and also below the average Union price even where transportation costs from the USA to the Union are taken into account. It is therefore likely that US producers would seek another outlet for their spare capacity.

(142) Given that the Union market is the biggest market for biodiesel worldwide and with biodiesel prices that are in parity or slightly above the price level on the US domestic market, the Union market would be very attractive for US producers of biodiesel.

(143) It is therefore very likely that US producers would use a large part of their spare capacity to re-enter the Union market should the existing measures be allowed to lapse. As established above (recital (46)), it is likely that the US producers will export biodiesel to the Union at dumped price levels in order to compete with Union producers on the Union market. Given their current pricing behaviour on other export markets (recitals (57)-(58) above) and the large spare capacity available it is very likely that significant volumes of US biodiesel would re-enter the Union market at dumped prices equal to, or below the Union prices.

(144) Such imports would exercise a significant pressure and even downwards price pressure on Union industry, which at current price levels, is only making a very small profit, which is significantly below its target profit. This would most likely result in a decrease of production and sales volumes, less profitability and loss of market share.

(145) Given the fragile economic situation of the Union industry, such likely scenario would have a significant adverse effect on the ongoing recovery of the Union industry and would in all likelihood cause recurrence of material injury.

5.1. **Conclusion**

(146) On the basis of the above, the Commission has concluded that material injury to the Union industry would most likely recur should the existing measures against imports of biodiesel from USA be allowed to lapse.

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6. UNION INTEREST

(147) In accordance with Article 21 of the basic Regulation, the Commission examined whether it would be against the Union interest to maintain the measures in place despite the findings above on the likely recurrence of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and importers as well as users of biodiesel.

6.1. **Interest of the Union industry**

(148) The existing measures have contributed to an almost total reduction of dumped imports of biodiesel from the USA and offered relief to the Union industry. While the Union industry has shown positive signs of recovery from past dumping, such as increased production and sales volume, biodiesel prices on the Union market have decreased significantly and the profitability has remained very low, thus leaving the industry in a fragile and vulnerable economic situation.

(149) If the existing measures were allowed to lapse, the Union industry would most certainly be faced with increased unfair competition in the form of significant volumes of dumped imports of biodiesel from the USA. This would put a halt to the on-going recovery which the Union biodiesel industry is currently experiencing and most likely result in the recurrence of material injury. Terminating the measures is therefore not in the interest of the Union industry.

6.2. **Interest of unrelated importers and traders**

(150) Only three importers/traders came forward and made their views known. Whilst one company claimed that the level of current duties is disproportionate and that extension would distort and limit the market resulting in higher prices, the other two companies claimed that the existing measures had not affected their activities and were neutral as to a possible extension of the existing anti-dumping measures.

(151) The findings of this investigation do not support the argument that a continuation of the existing measures would limit the market and result in higher prices. On the contrary, during the period considered, Union prices have decreased despite the existence of measures. In addition, the Union industry has today sufficient capacity to supply Union demand for biodiesel and also spare capacity to satisfy a future increase in demand. Therefore, the arguments put forward do not provide evidence that the continuation of existing measures would be against the interest of importers and/or traders.

6.3. **Interest of users**

(152) Only one user, an oil company which purchases biodiesel to blend with mineral oils, came forward and made its view known to the Commission. It was strongly in favour of maintaining the existing measures and claimed that their removal

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could have devastating effects on the Union biodiesel market leading to an influx of significant volumes of dumped biodiesel which would result in a recurrence of severe injury do the Union biodiesel industry.

(153) There are no indications that the existing measures have negatively affected the Union users of biodiesel, and notably, there is no evidence that the existing measures have had an adverse effect on their profitability or business. In any event, due to the stable or only slightly increase in Union consumption of biodiesel in the Union, the Union industry has enough capacity to satisfy current and future demand should the demand further increase. Maintaining the measures would not lead to a lack of supply.

(154) It can therefore be concluded that maintaining the measures would not be against the interest of users.

6.4. **Conclusion on Union interest**

(155) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain the existing measures on imports of biodiesel originating in the USA.

7. **ANTI-DUMPING MEASURES**

(156) In view of the conclusions reached with regard to the likelihood of continuation or recurrence of dumping and injury, it follows that, in accordance with Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of biodiesel originating in the USA, imposed by Regulation (EC) No 599/2009, as amended by Implementing Regulation (EU) No 444/2011, should be maintained for an additional period of five years.

(157) As outlined in recital (2) above, the anti-dumping duties in force on imports of biodiesel from the USA were extended to cover also imports of the same product consigned from Canada, whether declared as originating in Canada or not, and to 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.

(158) The anti-dumping duties to be maintained shall continue to be extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not as well as to 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.

(159) The exporting producers from Canada that were exempted from the measures, as extended by Implementing Regulation (EU) No 444/2011, shall also be exempted from the measures imposed by this Regulation.

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(160) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed 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 'bio-diesel', 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 USA, currently falling within CN codes ex 1516 20 98 (TARIC code 1516 20 98 29), ex 1518 00 91 (TARIC code 1518 00 91 29), ex 1518 00 99 (TARIC code 1518 00 99 29), ex 2710 19 43 (TARIC code 2710 19 43 29), ex 2710 19 46 (TARIC code 2710 19 46 29), ex 2710 19 47 (TARIC code 2710 19 47 29), ex 2710 20 11 (TARIC code 2710 20 11 29), ex 2710 20 15 (TARIC code 2710 20 15 29), ex 2710 20 17 (TARIC code 2710 20 17 29), ex 3824 90 92 (TARIC code 3824 90 92 12), ex 3826 00 10 (TARIC codes 3826 00 10 29, 3826 00 10 39, 3826 00 10 49, 3826 00 10 99), and ex 3826 00 90 (TARIC code 3826 00 90 19).

2. The rates of the definitive anti-dumping duty applicable to the, net free-at-Union-frontier price, before duty, of the product described in paragraph 1, and manufactured by the companies listed below, shall be a fixed amount as follows:

Company	AD duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	68,6	A933
Cargill Inc., Wayzata	0	A934
Green Earth Fuels of Houston LLC, Houston	70,6	A935
Imperium Renewables Inc., Seattle	76,5	A936
Peter Cremer North America LP, Cincinnati	198,0	A937
World Energy Alternatives LLC, Boston	82,7	A939
Companies listed in Annex I	115,6	See Annex I
All other companies	172,2	A999

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

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3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3, of Commission Regulation (EEC) No 2454/93 ([1]), the amount of anti-dumping duty laid down in paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

4. The application of the individual duty rate specified for the companies listed in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall to conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

5. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 2

▼M1

1. The definitive anti-dumping duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is hereby extended to 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, whether declared as originating in Canada or not, 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 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 15 (TARIC code 2710 20 15 21), ex 2710 20 17 (TARIC code 2710 20 17 21), ex 3824 90 92 (TARIC code 3824 90 92 10), ex 3826 00 10 (TARIC codes 3826 00 10 20, 3826 00 10 30, 3826 00 10 40, 3826 00 10 89) and ex 3826 00 90 (TARIC code 3826 00 90 11), with the exception of those produced by the companies listed below:

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

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 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).

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The duty to be extended shall be the one established for 'all other companies' in Article 1, paragraph 2, which is a definitive anti-dumping duty of EUR 172,2 per tonne net.

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

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2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid down in Article 145, paragraphs 2 and 3 of Regulation (EEC) No 2454/93, the amount of anti-dumping duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

3. The application of the exemptions granted to companies listed in paragraph 1 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall to conform to the requirements set out in Annex II. If no such invoice is presented, the duty rate as imposed by Article 1, paragraph 1 to 'all other companies' shall apply.

4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 3

1. The definitive anti-dumping duty as set out in Article 1, paragraph 2, is hereby extended to 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 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 43 (TARIC code 2710 19 43 30), ex 2710 19 46 (TARIC code 2710 19 46 30), ex 2710 19 47 (TARIC code 2710 19 47 30), ex 2710 20 11 (TARIC code 2710 20 11 30), ex 2710 20 15 (TARIC code 2710 20 15 30), ex 2710 20 17 (TARIC code 2710 20 17 30),, ex 3824 90 92 (TARIC code 3824 90 92 20), and ex 3826 00 90 (TARIC code 3826 00 90 30)..

The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono-alkyl esters and of paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

2. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is adjusted by the seller for the benefit of the buyer, occurring the conditions laid

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down in Article 145, paragraphs 2 and 3, of Regulation (EEC) No 2454/93, the amount of anti-dumping duty laid down in Article 1, paragraph 2 shall be reduced by a percentage which represents the apportioning of the adjustment to the price actually paid or payable.

3. The application of the individual duty rate specified for the companies listed in Article 1, paragraph 2, shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall to conform to the requirements set out in Annex III. If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the relevant provisions in force concerning customs duties shall apply.

Article 4

1. Requests for exemption from the duty extended by Article 2(1) and Article 3(1) shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Rue de la Loi 170, CHAR 04/034
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, 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 Regulation (EC) No 599/2009, from the duty extended by Article 2(1) and Article 3(1).

Article 5

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 the Member States in accordance with the Treaties.

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ANNEX I

Company Name	City	TARIC additional code
American Made Fuels, Inc.	Canton	A940
AG Processing Inc.	Omaha	A942
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
Arkansas SoyEnergy Group	DeWitt	A940
Arlington Energy, LLC	Mansfield	A940
Athens Biodiesel, LLC	Athens	A940
Beacon Energy	Cleburne	A940
Biodiesel of Texas, Inc.	Denton	A940
BioDiesel One Ltd	Southington	A940
Buffalo Biodiesel, Inc	Tonawanda	A940
BullDog BioDiesel	Ellenwood	A940
Carbon Neutral Solutions, LLC	Mauldin	A940
Central Iowa Energy, LLC	Newton	A940
Chesapeake Custom Chemical Corp.	Ridgeway	A940
Community Fuels	Stockton	A940
Delta BioFuels, Inc.	Natchez	A940
Diamond Biofuels	Mazon	A940
Direct Fuels	Euless	A940
Eagle Creek Fuel Services, LLC	Baltimore	A940
Earl Fisher Bio Fuels	Chester	A940
East Fork Biodiesel, LLC	Algona	A940
ECO Solutions, LLC	Chatsworth	A940
Ecogy Biofuels, LLC	Tulsa	A940
ED & F Man Biofuels Inc.	New Orleans	A940
Freedom Biofuels, Inc.	Madison	A940
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940

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Company Name	City	TARIC additional code
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel, LP (BioSelect Fuels)	Houston	A940
Geo Green Fuels, LLC	Houston	A940
Georgia Biofuels Corp.	Loganville	A940
Green River Biodiesel, Inc.	Moundville	A940
Griffin Industries, Inc.	Cold Spring	A940
High Plains Bioenergy	Guymon	A940
Huish Detergents, Inc.	Salt Lake City	A940
Incobrasa Industries, Ltd.	Gilman	A940
Independence Renewable Energy Corp.	Perdue Hill	A940
Indiana Flex Fuels	LaPorte	A940
Innovation Fuels, Inc.	Newark	A940
Iowa Renewable Energy, LLC	Washington	A940
Johann Haltermann Ltd.	Houston	A940
Lake Erie Biofuels, LLC	Erie	A940
Leland Organic Corporation	Leland	A940
Louis Dreyfus Agricultural Industries, LLC	Wilton	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Memphis Biofuels, LLC	Memphis	A942
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels, LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940
Nova Biofuels Clinton County, LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels, Ltd	Houston	A940

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Company Name	City	TARIC additional code
Owensboro Grain Company LLC	Owensboro	A940
Paseo Cargill Energy, LLC	Kansas City	A940
Peach State Labs, Inc.	Rome	A940
Perihelion Global, Inc.	Opp	A940
Philadelphia Fry-O-Diesel Inc.	Philadelphia	A940
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
RBF Port Neches LLC	Houston	A940
Red Birch Energy, Inc.	Bassett	A940
Red River Biodiesel Ltd.	New Boston	A940
REG Ralston, LLC	Ralston	A940
Renewable Energy Products, LLC	Santa Fe Springs	A940
Riksch BioFuels LLC	Crawfordsville	A940
Safe Renewable Corp.	Conroe	A940
Sanimax Energy Inc.	DeForest	A940
Scott Petroleum	Itta Bena	A942
Seminole Biodiesel	Bainbridge	A940
Soy Solutions	Milford	A940
SoyMor Biodiesel, LLC	Albert Lea	A940
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940
U.S. Biofuels, Inc.	Rome	A940
United Oil Company	Pittsbourgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vinmar Overseas, Ltd	Houston	A938
Vitol Inc.	Houston	A940

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Company Name	City	TARIC additional code
Walsh Bio Diesel, LLC	Mauston	A940
Western Dubque Biodiesel, LLC	Farley	A940
Western Iowa Energy, LLC	Wall Lake	A940
Western Petroleum Company	Eden Prairie	A940

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ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(4) and Article 2(3):

— the name and function of the official of the entity issuing the commercial invoice,

— the following declaration:

‘I, the undersigned, certify that the (volume) 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 sold for export to the European Union covered by this invoice was manufactured by [*company name and address*] [*TARIC additional code*] in [*countr[y]ies concerned*]. I declare that the information provided in this invoice is complete and correct.’

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ANNEX III

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 3(3):

— the name and function of the official of the entity issuing the commercial invoice.

— the following declaration:

‘I, the undersigned, certify that the (volume) 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 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin sold for export to the European Union covered by this invoice was manufactured by [*company name and address*] [*TARIC additional code*] in the United States of America. I declare that the information provided in this invoice is complete and correct.’