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►**B** **COMMISSION IMPLEMENTING REGULATION (EU) 2015/1519**

of 14 September 2015

imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009

(OJ L 239, 15.9.2015, p. 99)

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COMMISSION IMPLEMENTING REGULATION (EU) 2015/1519

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imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 18(1) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 598/2009 [2], the Council imposed a definitive countervailing duty, ranging from EUR 211,2 to EUR 237 per tonne net, on imports of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or in a blend containing by weight more than 20 % of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, 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 countervailing duty imposed by this regulation is hereafter referred to as 'the existing measures'.

(2) By Implementing Regulation (EU) No 443/2011 [3], following an anti-circumvention investigation, the Council extended the definitive anti-countervailing imposed by Regulation (EC) No 598/2009 to imports into the Union of biodiesel consigned from Canada, whether declared as originating in Canada or not, with the exception of those produced by the companies BIOX

[1] OJ L 188, 18.7.2009, p. 93.

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

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

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Corporation, Oakville and Rothsay Biodiesel, Guelph, Ontario, Canada. By the same Regulation the Council also extended the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, originating in the 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 exports from Argentina and Indonesia ([4]).

1.3. **Request for a review**

(4) Following the publication of a notice of impending expiry ([5]) of the countervailing measures in force on the imports of biodiesel originating in the United States of America, the European Commission ('the Commission') has received a request for review pursuant to Article 18 of the basic Regulation.

(5) The request was lodged on 9 April 2014 by the European Biodiesel Board ('the applicant') on behalf of Union 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 subsidisation 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 Council Regulation (EC) No 1225/2009 ([6]), that sufficient evidence existed to justify the initiation of an expiry review, the Commission announced, on 10 July 2014, by a notice published in the *Official Journal of the European Union* (Notice of Initiation) ([7]) the initiation of an expiry review under Article 18 of the basic Regulation. On the same day, the Commission initiated an expiry review of the anti-dumping measures in force on the imports of biodiesel originating in USA ([8]). This is a parallel but distinct proceeding which is dealt with by means of a separate Regulation.

([4]) 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).

([5]) Notice of the impending expiry of certain countervailing measures (OJ C 289, 4.10.2013, p. 11).

([6]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

([7]) OJ C 217, 10.7.2014, p. 25.

([8]) 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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(7) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of the United States of America ('USG') that it had received a properly documented review request and invited the USG for consultations with the aim of clarifying the situation as regards the content of the review request and arriving at a mutually agreed solution. The USG accepted the offer for consultations and consultations were subsequently held on 3 July 2014. During the consultations, no mutually agreed solution could be reached. However, due note was taken of the comments submitted by the authorities of the USG.

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

(8) The investigation of the likelihood of a continuation and recurrence of subsidy 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 a recurrence of injury covered the period from 1 January 2011 to 30 June 2014 ('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 27 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.

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(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 in particular with sizeable production and sales volumes which were not included in the provisional sample. However, the two companies identified by NBB were either related to another 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 final 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 (151) 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 is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

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(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 is 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 and 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 with the highest volume of domestic and export sales. In accordance with Article 27(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 no to respond to the questionnaire. The other two sampled exporting producers requested various extensions to the deadline, which were granted, but no complete replies were submitted.

(23) On 10 November 2014 the Commission sent a letter informing the three sampled companies about the intention to apply Article 28 of the basic Regulation. The USA authorities were also informed about the intention of the Commission to apply Article 28 of the basic Regulation. 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 28 of the basic Regulation and, accordingly, that findings, affirmative or negative, may be made on the basis of the facts available.

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1.8. **Questionnaire replies and verification visits**

(26) The Commission received questionnaire replies from the authorities of the USA, from the sampled Union producers and from four users/traders.

(27) The Commission sought and verified all the information deemed necessary for a determination of subsidisation, resulting injury and Union interest.

(28) Verification visits were carried out at the premises of the following authorities of the United States of America:

Federal authorities of the USA

— Department of Treasury (DOT)

— Department of Agriculture (USDA)

State authorities

— Florida State Authorities, Tallahassee

— Iowa State Authorities, Des Moines

— Kansas State Authorities, Topeka

— Kentucky State Authorities, Frankfort

(29) Verification visits were carried out at the premises of the following 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 S.A., 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-subsidy measures in force and invited all interested parties to comment. The Commission considered the comments made by the interested parties and took them into account, where appropriate.

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

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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 United States of America ('the product under review'), 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.

(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.

(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 has 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 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 2(c) of the basic Regulation.

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2.3. **Claims regarding product scope**

(37) The US Government claimed that diesel produced from biomass ([9]) 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 ([10]), 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 rejected this claim by the US Government.

3. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF SUBSIDIES

3.1. Preliminary remarks

(38) In accordance with Article 18(1) 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 subsidisation. The notion of recurrence implies that a subsidy does not have to be in force at the time of initiation or when the decision to maintain the measures is taken. Consequently, the Commission also verified whether subsidies which have expired after the RIP are likely to recur.

(39) The Commission analysed all subsidy schemes identified in the review request and asked the authorities of the USA to provide information on any other possible subsidy schemes. On the basis of the information contained in the reply to the Commission's questionnaire by the authorities of the USA, the Commission analysed the following schemes which were in force during the RIP:

Federal Schemes

(a) Biodiesel mixture credit and biodiesel credit

(b) Small agri-biodiesel producer income tax credit

(c) Credit for production of cellulosic biofuel

(d) USDA bioenergy programme for advanced biofuels

State Schemes

(a) Florida: Florida Biofuels Investment Tax Credit

([9]) Under US legislation, 26 U.S. 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.

([10]) 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, footnote 5.

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(b) Iowa: Iowa Biodiesel Producer Tax Refund

(c) Kansas: Kansas Qualified Biodiesel Fuel Producer Incentive

(d) Kentucky: Kentucky Biodiesel Production Tax Credit

(40) The following schemes will not be analysed hereinafter since, on the basis of the information provided by the authorities of the USA, they were either inactive, had expired before the RIP or did not provide any benefits to US biodiesel producers during the RIP:

Federal Scheme

Advanced biofuels loan guarantees

State Schemes

(i) Alabama Biofuel Production Facility Tax Credit

(ii) Arkansas Alternative Fuel Grants and Rebates

(iii) Illinois Renewable Fuels Development Programme

(iv) Indiana Biodiesel Production Tax Credit

(v) Kentucky Alternative Fuel Production Tax Incentives

(vi) Louisiana Biodiesel Equipment and Fuel Tax Exemption

(vii) Maine Biofuels Production Tax Credit

(viii) Maryland Biofuels Production Incentive

(ix) Mississippi Biofuels Production Incentive

(x) Missouri qualified biodiesel producer incentive fund

(xi) Montana Alternative Fuel Production Property Tax Incentive

(xii) Montana Biodiesel Production Facility Tax Credit

(xiii) Nebraska Biodiesel Production Investment Tax Credit

(xiv) New York Biofuel Production Tax Credit

(xv) South Carolina Credit for Biodiesel Facilities

(xvi) Texas fuel and biodiesel production incentive program

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(xvii) Virginia Biofuels Production Grants

(xviii) Washington Alternative Fuel Loans and Grants

(xix) Washington State biofuels production tax exemption

3.2. **Subsidisation of imports during the RIP — Federal Schemes**

3.2.1. *Biodiesel mixture credit and biodiesel credit*

3.2.1.1. Legal basis

(41) Title 26, Section 40A and sections 6426 and 6427 of the US Code (U.S.C.) are the legal basis for a tax credit scheme for biodiesel blenders, retailers and end-users. They provide for the following biodiesel fuel credits:

(i) the biodiesel mixture credit ('USD 1/gallon scheme');

(ii) the biodiesel credit;

(iii) the small agri-biodiesel producer credit.

(42) The small agri-biodiesel producer income tax credit is a tax credit which applies only to small agri-biodiesel producers. This scheme is dealt with in recitals (59) to (63) below.

3.2.1.2. Eligibility

(43) In order to be eligible for the biodiesel mixture credit referred to under (i) in recital (41) above, a company must create a mixture of biodiesel and diesel fuel, which mixture is sold as a fuel or for use as a fuel.

(44) The person claiming the incentive must obtain a certification from the producer or importer of the biodiesel that identifies the product and the percentage of biodiesel and agri-biodiesel ([11]) in the product. This credit takes the form of an excise tax credit or, if a company's excise tax liability is less than the total excise tax credit, the company may then claim the residual credit as a refundable income tax credit. A refundable income tax credit is a credit against the taxpayer's income taxes or a direct payment. It is refundable because the excess credit can be disbursed to the taxpayer as a direct cash payment if the credit is greater than the individual's tax liability.

(45) The biodiesel credit referred to under (ii) in recital (41) above is a non-refundable income tax credit for retailers or end-users of neat (pure) biodiesel. The neat biodiesel credit is available only to the person who places the gallon of neat biodiesel into the fuel tank of a vehicle or uses it as fuel. It should be noted that also biodiesel producers, producing their own biodiesel, would be

([11]) As defined by the USC, agri-biodiesel is biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, cramble, rapeseeds, safflowers, flax-seeds, rice bran, and mustard seeds, and from animal fats.

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able to receive this credit. Thus to claim the credit, the biodiesel producer must be acting as either a retailer (putting the gallon of biodiesel into the end-user's gas tank) or an end-user (e.g. putting the biodiesel into his own vehicles).

3.2.1.3. Practical implementation

(46) Biodiesel that is mixed with mineral diesel fuel is entitled to a biodiesel mixture excise tax or income tax credit. During the RIP, the credit prevailing was USD 1 per gallon for all types of biodiesel, i.e. including agri-biodiesel and diesel from biomass.

(47) The final tax credit for the blended fuel depends on the proportion of biodiesel it contains. The minimum requirement, and what is the most common practice, is to add 0,1 % mineral diesel to 99,9 % biodiesel (this blended product is referred to as B99 in the USA), as this ensures that the maximum tax credit is obtained. The proportion of biodiesel in a blended product qualifies for the tax credit (e.g. 100 gallons of B99 will contain 99,9 gallons of biodiesel and be eligible for a tax credit of USD 99,90). The conversion of biodiesel from a pure product (B100) to a mixed product (B99) is a simple process. It implies the addition of 0,1 % of mineral diesel into pure biodiesel and does not entail a major transformation of the product concerned. It is the activity of blending that triggers the eligibility for the credit.

(48) The producers of biodiesel can claim the incentive when they are themselves performing a blending activity. The producer must blend the neat biodiesel with mineral diesel fuel. In terms of entitlement to the incentive, there are no differences between blended biodiesel destined for domestic sale and sale for export.

(49) Companies that do not produce but rather purchase pure biodiesel and blend it into a biodiesel mixture are also entitled to the tax credit. Such companies must obtain a certificate from the producer or the importer (and if applicable any intervening resellers) of the biodiesel in which the producer effectively certifies not to have claimed the tax credit. This certificate is transferable entitling the holder to a USD 1 per neat biodiesel gallon tax credit.

(50) The incentive can be claimed either as a credit against excise or income tax liability or as a direct cash payment. The total amount of the incentive remains the same (USD 1 per gallon) whether the incentive is claimed as an excise tax credit, an income tax credit, a direct payment to the taxpayer, or any combination of the foregoing.

(51) The U.S.C. provides that the biodiesel mixture credit will not be granted unless the company (blender) that makes the mixture of biodiesel and mineral diesel obtains a certificate (‘Certificate for Biodiesel’) from the producer of the biodiesel in which the producer certifies, inter alia, the quantity of biodiesel to which the certificate relates and whether the biodiesel is agri-biodiesel or biodiesel other than agri-biodiesel. If a company that produces biodiesel subsequently blends that biodiesel with mineral diesel and claims the tax credit, that company will provide the Certificate for Biodiesel with the required documentation to make a claim for credit. A person that receives a Certificate for

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Biodiesel, and subsequently sells the biodiesel without producing a biodiesel mixture, is to provide the Certificate for Biodiesel to the purchaser as well as providing a 'statement of biodiesel reseller'. In other words, the company that blends the mixture and claims the tax credit may obtain the Certificate for Biodiesel either directly from the producer of the biodiesel or indirectly from a biodiesel reseller. Thus, this certificate is transferable entitling the holder to a USD 1 per gallon tax credit for the number of gallons of biodiesel used by the claimant in producing any biodiesel mixture.

(52) No new information during the review period became available that would question the conclusion from the initial investigation that all biodiesel is subsided through this tax credit.

(53) In regard to the biodiesel credit, by contrast to the previous investigation when the prevailing credit was USD 1 per gallon of unmixed (neat) agri-biodiesel, or USD 0,50 for each gallon of other unmixed biodiesel, the retailer (or a biodiesel producer acting as a retailer) or end user of unblended biodiesel can now claim USD 1,00 per gallon for unmixed (neat) agri-biodiesel or other types of biodiesel as well as diesel produced from biomass as a non-refundable general business income tax credit. A non-refundable general business credit is a credit against the business's income tax. It is non-refundable because, if the business's credits are greater than its tax liability, the excess credit cannot be disbursed to the business as a direct cash payment. However, according to the information provided by the US authorities, business income tax credit granted for one year can be carried back two years and carried forward for 20 years.

(54) The US authorities acknowledged that some biodiesel producers must have benefited from this credit during the RIP acting as retailers or users, but were unable to quantify the exact benefits received by them during the RIP.

3.2.1.4. Conclusion

(55) The biodiesel mixture credit as well as the biodiesel credit have to be regarded as a fiscal incentive whether or not they are given as a cash payment (only possible for biodiesel mixture credit) or has to be offset against tax liabilities (applicable to both tax credits).

(56) The Commission considers the schemes to be a subsidy in the sense of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the United States of America in the form of direct grants (cash payments, only possible for the biodiesel mixture credit) and revenue foregone which is otherwise due (tax offset) (applicable to both tax credits). The incentives confer a benefit on the companies receiving them.

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(57) The schemes are limited to companies that are involved in the biodiesel industry and are therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

(58) Finally, as the biodiesel mixture credit scheme provides for a subsidy of USD 1 per gallon for all types of biodiesel, the Commission considers that this scheme provided significant amount of subsidies to the US biodiesel exporting producers and thus remained by far the most important scheme during the RIP.

3.2.2. *Small agri-biodiesel producer income tax credit*

3.2.2.1. Legal basis

(59) Title 26, U.S.C., Section 40A also provides for a small agri-biodiesel producer income tax credit.

3.2.2.2. Eligibility

(60) This scheme is only available to small producers of neat agri-biodiesel. Any mixer, blender, or trader who purchases but does not produce biodiesel is not eligible for the credit. A small producer is any person whose production capacity is not more than 60 million gallons of agri-biodiesel per year. The small agri-biodiesel producer can claim a USD 0,10 non-refundable general business income tax credit for each gallon of agri-biodiesel produced. The qualified production of a producer may not exceed 15 million gallons in any taxable year. For the producer to claim the credit, the agri-biodiesel must be used as a fuel, sold for use as a fuel, or used to create a mixture of biodiesel and diesel fuel that is used as a fuel or sold for use as a fuel. Thus small agri-biodiesel producers can combine this scheme with the biodiesel mixture credit scheme and thus receive altogether USD 1,10 per gallon. By contrast, big agri-biodiesel producers are eligible only for the biodiesel mixture credit scheme.

3.2.2.3. Practical implementation

(61) Claims for the non-refundable general business income tax credits are made annually when the claimant is making its income tax return. The credit for each gallon of biodiesel produced by the claimant during the relevant tax year, up to a maximum of 15 million gallons, is offset against the claimant's liability for corporate income tax. If the claimant's tax liability is less than the amount of credit claimed, the excess amount can be carried forward to subsequent tax years.

3.2.2.4. Conclusion

(62) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the Government of the

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United States of America in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.

(63) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.2.3. *Bioenergy programme for advanced biofuel (BPAB)*

3.2.3.1. Legal basis

(64) The US Department of Agriculture ('USDA') Bioenergy programme for advanced biofuel (BPAB) is governed by Title IX, Section 9005 of the Farm Security and Rural Investment Act of 2002 (the '2002 Farm Bill'). The programme was scheduled to expire in 2012, but was extended in 2013 and subsequently in 2014. The Agriculture Act of 2014 extended the programme for another 5 years, until the end of 2018.

3.2.3.2. Eligibility

(65) This programme provides direct grants to producers of advanced biofuels, which are generally defined as 'fuel derived from biomass other than corn kernel starch'. The definition includes diesel produced from biomass ([12]). No more than five percent of the programme's funds may be distributed to eligible producers with a refining capacity exceeding 150 000 000 gallons of advanced biofuel per year. Blenders are not eligible for the programme.

3.2.3.3. Practical implementation

(66) Participants receive direct payments from the government after having applied for the programme. Producers have to register first with the authority and sign a contract. The producers must submit payment applications for each quarter of the fiscal year in order to receive payment for that quarter's production of advanced biofuel. Payments are provided for both actual production and incremental production. Actual production payments are calculated quarterly for the amount of actual advanced biofuel produced each quarter.

(67) Incremental production payments are made for the quantity of eligible advanced biofuel produced in a fiscal year that exceeded the quantity produced in the prior fiscal years (since 2009).

(68) The funding is divided among all producers who come forward based on the Btu ([13]) value of the production. The funding is distributed evenly among all producers depending on Btu value.

([12]) Section 428.102 'Definitions' of the implementing regulations: 'Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat.' Potentially 'biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste' could also include production of biodiesel.

([13]) The British thermal unit (BTU or Btu) is a unit of energy equal to about 1 055 joules.

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3.2.3.4. Conclusion

(69) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the Government of the United States of America in the form of a direct grant. The incentive confers a benefit on the companies receiving them.

(70) The scheme is limited to companies that produce biodiesel and is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.2.4. *Credit for Production of Cellulosic Biofuel*

3.2.4.1. Legal basis

(71) The programme exists since 1 January 2009 and was established by the Food, Conservation, and Energy Act of 2008. After 1 January 2011 the programme was extended in the same way as the other three schemes above (see details in Section 3.4.1 below). The law adopted on 19 December 2014 retroactively reinstated the scheme for the entire year of 2014 ([14]), but companies can carry forward up to 20 years the tax credit acquired from the scheme.

3.2.4.2. Eligibility

(72) This scheme provides for USD 1,01 per gallon non-refundable general business income tax credit to second generation biofuel used as fuel or sold for use as fuel. Producers are eligible, including producers of biofuel derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, as well as algae-based fuels.

3.2.4.3. Practical implementation

(73) The US authorities did not submit detailed figures about the benefits provided during the RIP. They claimed that they will only know the benefits for 2013 by October 2015 and for 2014 by 2016. However, it seems that the scheme has not provided benefits to producers of diesel qualifying as second generation fuel. This is due to the fact that so far such diesel does not seem to be produced on a commercial basis and the quantities produced and sold on the market are rather marginal.

3.2.4.4. Conclusion

(74) In view of the above, the Commission does not consider that this scheme provided benefits to biodiesel producers during the RIP and did not analyse its impact on possible continuation and/or recurrence of subsidisation.

([14]) By means of Tax Increase Prevention Act of 2014, signed by the President of the USA on 19 December 2014. Extension of Second Generation Biofuel Producer Credit thereof.

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3.3. **Subsidisation of imports during the RIP — State Schemes**

3.3.1. *Florida Biofuels Investment Tax Credit*

3.3.1.1. Legal basis

(75) The legal basis of this scheme operated by the Florida Department of Agriculture and Consumer Services is Section 220.192 of the Florida Statutes.

3.3.1.2. Eligibility

(76) The Renewable Energy Technologies Investment Tax Credit programme provides an annual corporate tax credit to all eligible entities for all capital costs, operation and maintenance costs, and research and development costs incurred between 1 July 2012, and 30 June 2016, in connection with an investment in the production, storage, and distribution of biodiesel, ethanol, and other renewable fuel in the state of Florida.

3.3.1.3. Practical implementation

(77) Applications for the tax credit must be received by the department on or before 1st November of each year and are reviewed on a first-come, first-served basis. Applications must include supporting documentation for all eligible costs. Applicants must also submit a summary describing how the materials are being used in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ethanol (E10-E100) or other renewable fuels in Florida. In addition, applicants must submit with the completed application a description of the project's economic impact in Florida.

(78) The scheme offers an annual corporate tax credit equal to 75 % (up to USD 1 million per taxpayer and USD 10 million total per state fiscal year) of all capital costs, operation and maintenance costs, and R & D costs in connection with an investment in the production, storage and distribution of, among others, biodiesel and other renewable fuel in the state. The credit is up to USD 1 million per taxpayer and the unused amount may be carried forward and used in tax years from 1 January 2013 until 31 December 2018, after which the credit carryover expires and may not be used.

3.3.1.4. Conclusion

(79) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the State of Florida in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.

(80) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

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3.3.2. *Iowa Biodiesel Producer Tax Refund*

3.3.2.1. Legal basis

(81) The legal basis of this scheme operated by Iowa Department of Revenue is Section 423.4(9) of the Iowa Code.

3.3.2.2. Eligibility

(82) The producer must be a manufacturer of biodiesel, registered by the United States Environmental Protection Agency, pursuant to 40 C.F.R. §79.4. The biodiesel must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2. The biodiesel must be produced in Iowa.

3.3.2.3. Practical implementation

(83) Eligible biodiesel producers need to introduce a refund claim providing data on the number of biodiesel gallons produced during the quarter. The Department of Revenue reviews the refund claim and, if approved, issues a refund check to each biodiesel producer.

(84) The refund claims are filed in April, July, October and January of each year, and the refund checks are issued in May, August, November and February of each year.

(85) The programme provides a refund of USD 0,03 per gallon of biodiesel produced in Iowa (USD 0,03 for 2012, USD 0,025 for 2013 and USD 0,02 for 2014-2017). The refund is limited to the first 25 million gallons produced at each facility.

3.3.2.4. Conclusion

(86) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the State of Iowa in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.

(87) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.3.3. *Kansas Qualified Biodiesel Fuel Producer Incentive*

3.3.3.1. Legal basis

(88) The legal basis of this scheme operated by the Kansas Department of Revenue is Kansas Statutes Annotated (K.S.A.) 79-34,155 through K.S.A. 79-34,159 and Kansas Administrative Regulations (K.A.R.) 92-27-1 through K.A.R. 92-27-5. The scheme will expire on 1 July 2016.

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3.3.3.2. Eligibility

(89) The Kansas Qualified Biodiesel Fuel Producer Incentive Fund provides a direct grant of USD 0,30 per gallon to biodiesel producers established in the state of Kansas. Incentive payments are contingent on funds available and are distributed on a pro rata basis, if required.

(90) The scheme has been underfunded in recent years and at this stage no funding is planned up until 1 July 2015. The scheme did not receive funding after 1 July 2014 either. Nevertheless, the scheme did provide benefits to several US producers during the RIP. In addition, it cannot be excluded that part or the total amount of funding provided for in the statutory acts (USD 875 000 quarterly) could be allocated to the scheme after 1 July 2015.

3.3.3.3. Conclusion

(91) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the State of Kansas in the form of a direct grant. The incentive confers a benefit on the companies receiving them.

(92) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.3.4. *Kentucky Biodiesel Production Tax Credit*

3.3.4.1. Legal basis

(93) The legal basis of this scheme operated by Kentucky Department of Revenue is Kentucky Revised Statues (KRS) 154.27 and Kentucky Administrative Regulations (KAR) 307 KAR 1:040.

3.3.4.2. Eligibility

(94) Any biodiesel producer, biodiesel blender, or renewable diesel producer physically located in Kentucky is entitled to the production tax credit.

3.3.4.3. Practical implementation

(95) An eligible applicant must submit to the Department of Revenue an application on or before January 15 of the preceding calendar year. The applicant must provide evidence that the biodiesel produced meets certain specification requirements.

(96) An applicant claiming the tax credit must attach the credit certificate issued by the department to its tax return on which the tax credit is claimed.

(97) The credit rate is one dollar (USD 1) per biodiesel gallon produced by a biodiesel producer, one dollar (USD 1) per gallon of biodiesel used in the blending process by a biodiesel blender, and one dollar (USD 1) per gallon of renewable diesel

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(that is diesel from biomass) produced by a renewable diesel producer, unless the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap.

(98) The combined annual cap for biodiesel and renewable diesel tax credit for 2013 and 2014 was USD 10 million in accordance with KRS 141.422 (1)(c).

(99) If the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap, the department shall determine the amount of credit each biodiesel producer, biodiesel blender, and renewable diesel producer receives by multiplying the annual biodiesel and renewable diesel tax credit cap by a fraction, the numerator of which is the amount of approved credit for the biodiesel producer, biodiesel blender, and renewable diesel producer and the denominator of which is the total approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers.

3.3.4.4. Conclusion

(100) The Commission considers that this scheme is a subsidy in the sense of Article 3(1)(a)(ii) of the basic Regulation as the scheme provides a financial contribution by the State of Kentucky in the form of revenue foregone which is otherwise due. The incentive confers a benefit on the companies receiving them.

(101) The scheme is limited to companies that produce biodiesel and other types of fuel is therefore considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable.

3.4. **Likelihood of continuation or recurrence of subsidisation**

(102) The main scheme, as in the original investigation, continued to be the Biodiesel mixture credit scheme. This scheme was in force during the RIP but expired on 31 December 2014. Its legislative developments and its likelihood to be reintroduced are analysed below, together with the biodiesel credit and the small agri-biodiesel producer income tax credit.

3.4.1. *Expirations and prolongations of the three federal schemes*

(103) The three federal schemes (Biodiesel mixture credit, Biodiesel credit and Small agri-biodiesel producer credit) were enacted by American Jobs Creation Act of 2004 ([15]) and first entered into force on 1 January 2005. They were due to expire on 31 December 2008. Since then, they had been due to expire and had been extended four times:

([15]) As extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58) and amended by the Energy Improvement and Extension Act of 2008 (P.L. 110-343, Division B) §202-203.

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(i) The first extension was until 31 December 2009 and was enacted by Public Law 110-343, signed on 3 October 2008 (the 'Emergency Economic Stabilization Act of 2008: Division B — Energy Improvement and Extension Act of 2008');

(ii) The second extension was until 31 December 2011 and was enacted by Public Law 111-312, signed on 17 December 2010 (The 'Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010');

(iii) The third extension was until 31 December 2013 (covering also retroactively 2012) and was enacted by Public Law 112-240, signed on 2 January, 2013 (the 'American Taxpayer Relief Act of 2012');

(iv) The fourth and so far last extension was until 31 December 2014 and was enacted by Tax Increase Prevention Act of 2014, signed by the President of the USA on 19 December 2014.

(104) Consequently, throughout their existence, the three federal schemes have not only been constantly reinstated but were on two occasions (in 2013 and in 2014) even reinstated retroactively 11 months after they had expired. Therefore, since the introduction of the schemes in 2005, until the end of 2014, whether by means of simple extensions of the schemes, or by extensions with retroactive effects, the three federal schemes have been constantly available to US biodiesel producers.

(105) The funding for 2014 will only be disbursed to the beneficiaries in the second half of 2015 ([16]) since the deadline for applying for the retroactively introduced programme was extended until 8 August 2015.

3.4.2. *Likelihood of recurrence of subsidisation of the three federal schemes*

(106) The Commission considers that there is a strong likelihood that the three federal schemes will be reinstated in the near future, including covering retroactively the period after 31 December 2014 for the following reasons:

(107) First, the past four extensions described in section 3.4.1 above show an established pattern to reinstate the schemes.

(108) After final disclosure, NBB claimed that there would be no established pattern to reinstate the schemes since the two last reinstatements of the scheme were for the past and not for the future. On this basis, NBB states that if there is a pattern which

([16]) The authority (Internal Revenue Service) has to pay within 60 days after the claim is received (the latest on 8 August 2015) or IRS has to pay compensation.

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could be replicated in 2015, there could possibly be a reinstatement for 2015 but not for 2016. Allegedly, it would be not possible to predict with sufficient degree of probability that biodiesel produced in the US would benefit from the Biodiesel mixture credit when sold in 2016.

(109) NBB's claim is factually incorrect and should therefore be rejected. Only the last reinstatement of the scheme covered exclusively the past (for 2014), while all previous reinstatements included also future periods. For example, the reinstatement on 2 January 2013 covered retroactively 2012, but also the full year 2013. Similarly, the extensions in 2008 and 2010 also covered 2009 and 2011 respectively. Thus, there is not only a pattern of retroactive reinstatement of the schemes, but also all past reinstatements, except for the one in 2014, covered also future periods of operation of the scheme. In any event, it is irrelevant whether the next reinstatement of the scheme would cover only 2015 or also 2016. So far, the result of the previous reinstatements was a continuing subsidisation, and nothing indicates that such pattern will stop. Therefore, it is likely that 2016 (and the following several years) would be retroactively covered by future reinstatement(s), taking into account the following elements:

(i) the established pattern to reinstate the schemes;

(ii) the established fact in recitals (116)-(120) below that there has been no change in the prices of biodiesel in US domestic markets after the previous expiries of the schemes;

(iii) the continuation and non-abolition of the funding for the schemes in the past; and

(iv) the circumstance that, even if the schemes were to be abolished, they should have to be gradually reduced.

(110) NBB also submitted a number of arguments in support of the view that the reinstatement of the three federal schemes would be a pure possibility, but not a probability. First, it quoted a declaration by the International Council on Clean Transportation (ICCT) allegedly stating that there would be no evidence that biodiesel still needs a tax credit.

(111) Second, NBB pointed out that a recent Biodiesel Tax Incentive Reform and Extension Act of 2014 (also known as Draft Bill 2021), proposing to extend the biodiesel income and excise tax credits through 31 December 2017, failed to pass the Congress. NBB claimed that the House of Representatives is allegedly also not expected to take up or pass legislation during 2015 that would continue the biodiesel (mixture) credit.

(112) The first claim concerns a declaration by ICCT dated 31 July 2014. However, the US authorities did not follow this advice and prolonged the scheme at the end of the same year. Consequently, little weight should be given to a declaration of ICCT, when assessing the probability of future reinstatements.

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(113) Regarding the second statement, the Draft Bill S.2021 ([17]) was not adopted by the 2013-2014 Congress and the House of Representatives has not passed an extension of the tax incentives. However, a new draft law was introduced in the Congress on 21 May 2015 and it proposes the extension of the three subsidy schemes for the period between 31 December 2014 and 31 December 2016 ([18]). Therefore, it is factually incorrect that there is currently no legislative proposal discussed in the US legislative system. Even if this new law fails to be adopted, experience has shown that, under the US legislative system, it is possible that a Law is proposed and passed in only 18 days. According to the information provided by the USG, the Tax Increase Prevention Act of 2014 was first introduced in the U.S. House of Representatives only on 1 December 2014, while the final step in the legislative procedure was only 18 days later when President Obama signed the bill into law on 19 December 2014. Moreover, given the fact that, under the US legal system, such extensions can be applied retroactively — for example the reinstatement in 2013, which covered retroactively also 2012 — the adoption of a new extension can even take place after 2015.

(114) Following final disclosure, NBB also claimed that the Commission's assessment (see recital (107) above) would not meet the legal requirements of Article 18(1) of the basic Regulation which in their view requires the Commission to demonstrate that the expiry of the countervailing duties would lead to recurrence of subsidisation.

(115) Article 18(1) of the basic Regulation requires demonstrating the likelihood of recurrence of subsidisation, which necessarily implies that subsidised imports into the EU would resume absent the measures. As analysed in detail in section 3.5 below, the Commission established that it is likely that US biodiesel producers will resume exporting biodiesel at subsidised prices to the Union market at large volumes, if measures are allowed to lapse.

(116) Second, no changes in the prices of biodiesel in the US domestic market have been observed which could be linked to the past expiry of the schemes or to their current expiry after 31 December 2014. According to the data provided by NBB ([19]), domestic prices of biodiesel dropped during the financial crisis in 2008, increased in the second and third quarter of 2010 and then remained rather stable until the end of 2013. In the first half of 2014, prices decreased by around 30 %, while they would have been expected to increase, if the producers anticipated that the

([17]) https://www.congress.gov/bill/113th-congress/senate-bill/2021/text

([18]) HR 2517 'Powering American Jobs Act of 2015', introduced by Mike Kelly. Available at https://www.congress.gov/bill/114th-congress/house-bill/2517/text?q={%22search%22%3A[%22\%22hr2517\%22%22]}#toc-H48B28727047A4954BB43B03E81976580, accessed on 8 July 2015.

([19]) NBB's submission dated 29 September 2014.

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schemes would not be reinstated. This shows that biodiesel producers, as well as other market operators, had strong expectations that the schemes would be retroactively reinstated in the future, taking into account:

(i) the significance of the subsidies compared to the sales price of biodiesel; and

(ii) the fact that the original investigation revealed that some biodiesel producers include directly in their prices the purchaser's credit of the USD 1 per gallon scheme ([20]).

(117) Following final disclosure, NBB claimed that biodiesel prices fluctuate in accordance with the prices of mineral diesel and the cost of the feedstock. Thus, NBB argued that no inference can be made from the price evolution of biodiesel for the likelihood of recurrence of subsidisation, unless the impact of the cost of feedstock and the impact of the mineral diesel prices is taken into account.

(118) Irrespective of the impact of the prices of mineral diesel and the costs of the feedstock on the price fluctuation of biodiesel, the Commission concludes that the subsidy obtained by the biodiesel producers for each gallon of biodiesel produced must have reduced significantly the cost of production. This is also reflected in the final determination of the price of biodiesel. Since there was no cooperation from US companies, it is not possible to establish the exact effect of the subsidy on the cost of production. However, the Commission estimated that the one dollar (USD 1) provided for each biodiesel gallon produced constituted approximately one third of the final US domestic price of biodiesel during the RIP. Consequently, it reiterates its findings that biodiesel prices would have been expected to increase in the past, if the producers anticipated that the schemes would not be reinstated. However, no changes in the prices of biodiesel in the US domestic market have been observed which could be linked to the past expiry of the schemes or to their current expiry after 31 December 2014.

(119) Third, not only could the US biodiesel industry continuously avail itself of the subsidies provided by the three federal schemes, but also the funding had never been abolished for a particular time period. The scheme was never underfunded nor was its scope of beneficiaries/benefits provided reduced. On the contrary, in 2008 ([21]) the credit for USD 1 per gallon was extended to all producers of biodiesel and not only to

([20]) See recital 55 of Regulation (EC) No 194/2009.

([21]) By means of Section 202(a) of the Energy and Improvement and Extension Act 2008. However, Section 203 thereof amends I.R.C. Sections 40A and 6426 to exclude biodiesel imported and sold for export from the credits effective as from 15 May 2008. This is, however, a reduction of the scope of beneficiaries which has no actual effects on the US domestic market as it does not concern either production or importation of biodiesel consumed in the USA.

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producers of agri-biodiesel. Indeed, the funding provided in 2013 more than doubled in comparison with 2012, while for the first half of 2014 the funding was higher than the total one for 2013 ([22]).

Funding in million USD	2011	2012	2013	1.06.2013-31.12.2013	2014 (until 30 June, 2014)
Biodiesel Fuel Mixture Excise Credits	760,7	847,0	1 603,2	1 427,8	1 830,2

(120) Fourth, given the importance of the schemes for the US biodiesel industry and the expectations from all market operators that the schemes would continue to exist, even if the US were to decide to abolish the schemes for the future, it could not do so by simply allowing the schemes to expire. Instead, the funding available would have to gradually be reduced, i.e. within several years, and/or the number of eligible beneficiaries would have to be restricted. Otherwise it would risk causing serious injury to its domestic biodiesel industry, thereby leading to significant job losses (the industry employs around 60 000 people ([23])), dependency on imports of diesel and failure to meet the environmental objectives set by the Government by using biodiesel ([24]).

(121) After final disclosure, NBB claimed that the fact that sufficient funding was available in the past and that the scope of beneficiaries' benefits was not reduced in the past is irrelevant for a determination of the likelihood of recurrence of a subsidy programme that has expired. NBB further claimed that the fact that the US biodiesel industry employs around 60 000 people does not automatically mean that the subsidy programmes must be reinstated or must decline over time. Finally, the fact that Renewable Fuel Standard ('RFS')-2 requires a minimum of 1 billion gallons of biomass-based diesel to be used annually between 2011 and 2021 does not mean that this goal will not be achieved if the subsidy programmes are not reinstated.

(122) The Commission concludes that, given the magnitude of the funding provided by means of the three federal schemes and the expectations from all market operators that the schemes would continue to exist, it would be very difficult for the US authorities to simply allow the schemes to expire. The level of employment by the industry, the environmental and economic

([22]) Source: US Government reply. NB: the quoted figures cover only excise tax credits, but do not cover income tax credits and direct grants for which the USG did not provide information.

([23]) According to the NBB, 'Biodiesel Basics What is biodiesel?', http://www.biodiesel.org/what-is-biodiesel/biodiesel-basics, accessed on 24 March 2015.

([24]) The Renewable Fuel Standard-2, established by the Energy Policy Act (EPAct) of 2005, and subsequently by Energy Independence and Security Act (EISA) of 2007, requires a minimum of 1 billion gallons of biomass-based diesel be used annually between 2011 and 2022. It also requires the country use no less than 21 billion gallons of advanced biofuels by 2022. Biodiesel qualifies for compliance under both categories. Source: http://www.biodiesel.org/what-is-biodiesel/biodiesel-faq's, accessed on 30.3.2015.

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objectives served by the industry are important indicators of what would be at stake, if the US biodiesel industry is forced to reduce its production and capacity in the absence of or in the case of reduced federal subsidies. In addition, under this scenario the environmental objective (contained in RFS-2) of using no less than 22 billion gallons of advanced biofuels by 2022 ([25]), for which biodiesel also qualifies, will be also under threat.

(123) Consequently, the Commission considers that there is strong likelihood that the biodiesel mixture credit, biodiesel credit and small agri-biodiesel producers' credit schemes will be retroactively reinstated and will continue to confer benefits to US biodiesel producers in the future. The three federal schemes will likely cover retroactively the period after 31 December 2014, as has proven to be already the case in the past.

(124) NBB further claimed that, whilst Article 18(1) of the basic Regulation refers to the likelihood of recurrence of subsidisation, countervailing duties cannot be maintained if a subsidy programme is withdrawn at the time of findings in an expiry review and countervailing duties cannot be implemented when there is no subsidy to counteract so as to prevent injury being caused. The opposite would be inconsistent with Articles 15(1) and 17 of the basic Regulation, as well as with Article 19 of the Agreement on Subsidies and Countervailing Measures. NBB further claimed that a coherent reading of these provisions would determine that duties can only be maintained if the subsidy programme as such is still in place, but benefits under the programme are not afforded.

(125) This claim should be rejected. The wording of Article 18 of the basic Regulation does not necessarily require the Commission to establish that subsidisation actually exists in order to decide on the extension of the measures. Rather, Article 18 of the basic Regulation foresees that, while the measures are in force, subsidisation may not occur, and hence, it allows the possibility to establish a 'likelihood of recurrence of subsidisation'. Thus the existence of a subsidy scheme in force at the moment of extension is not an absolute requirement set out by Article 18 of the basic Regulation.

(126) Moreover, the context confirms that Article 15(1), 3rd sentence, of the basic Regulation is not applicable to expiry reviews. Article 15 of the basic Regulation in general determines the conditions for the imposition of definitive measures in the case of Article 10 investigations (that is new investigations). Indeed, many of its provisions are not applicable to expiry review investigations initiated pursuant to Article 18 of the basic Regulation.

([25]) See footnote 21 above.

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For example, Article 15(1) fifth paragraph thereof specifies that '*the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established*'. This paragraph is clearly not applicable to expiry reviews since according to Article 22(3) of the same regulation when an expiry review is conducted measures can only be repealed or maintained and thus cannot determine the amount of countervailing duty.

(127) Similar wording exists in Article 19 of the Agreement on Subsidies and Countervailing Measures which also clearly governs the conditions for the imposition of definitive measures in the case of new investigations.

(128) For the same reasons set out in recitals (125)-(127) above, the Commission is of the view that Article 17 of the basic Regulation is not applicable to expiry review investigations initiated pursuant to Article 18 of the basic Regulation.

(129) Finally, the purpose of Article 18 of the basic Regulation is to carry out a prospective analysis of the likelihood of continuation or recurrence of subsidisation and injury. Such an exercise suggests a certain degree of probability and distinguishes Article 18 of the basic Regulation from Articles 15(1) and 17 of the basic Regulation, whose objectives are to take into account a change in circumstances which has already occurred.

(130) Therefore, based on the wording, context and the objectives of Article 18, the Commission considers that Articles 15 and 17 of the basic Regulation do not apply to expiry reviews.

(131) For the reasons set above, the Commission rejects the claims put forward by NBB.

3.4.3. *Likelihood of continuation of subsidisation of other schemes*

(132) All subsidy schemes analysed above, on the basis of which subsidies were granted, were in force during the RIP.

(133) A number of small schemes are currently still in force, such as the bioenergy programme for advanced biofuel and the state subsidy schemes, and there are no indications that these schemes will come to an end in the near future.

(134) Therefore, with regard to the schemes in force, the Commission considers that the expiry of the measures would be likely to lead to the continuation of subsidisation.

3.5. **Impact of subsidisation on the exports to the EU**

(135) The Commission also examined whether subsidised exports from the USA to the Union would be made in significant volumes should the measures be allowed to lapse. Due to lack of cooperation from the selected sampled producers mentioned in

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recital (20) 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 questionnaire for the purpose of the sampling, Eurostat, the request for an expiry review, subsequent submissions from the applicant, the US National Biodiesel Board (NBB), the websites of the US Energy Information Administration (EIA) and the US Department of Energy, and the US International Trade Commission.

(136) On the basis of data collected from the EIA, 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 Environmental Protection Agency (EPA), that is 6 963 000 tonnes.

(137) 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.

(138) 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 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.

(139) However, this claim cannot be accepted. The data provided by the NBB cannot 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.

(140) 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.

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(141) 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.

(142) 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.

(143) 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.

(144) 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*' ([26]). It is clear from the above that EIA takes into account in the total production capacity in the USA 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. Therefore this idle capacity has to be considered as part of the total US biodiesel production capacity.

(145) 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.

(146) Second, 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 production for a single export shipment.

(147) The Commission considers that this claim must be rejected. 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

([26]) http://www.eia.gov/survey/form/eia_22m/instructions.pdf, accessed on 7.7.2015.

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(1 April 2007 to 31 March 2008). This shows that there are US producers with sufficient production capacity to be able to export. In addition, 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.

(148) Moreover, 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. Last but not least, the level of prices in the Union, which are higher than in other third markets, would incentivise the US producers to export to the Union rather than to other third markets.

(149) Therefore, the Commission concludes that in view of the likelihood of continuation and recurrence of subsidisation, combined with the significant spare capacity of the US biodiesel industry and the attractiveness of the Union market, it is likely that US biodiesel producers will resume exporting biodiesel at subsidised prices to the Union market at large volumes, if measures are allowed to lapse.

3.6. **Conclusion**

(150) In view of the above, in accordance with Article 18(3) of the basic Regulation, the Commission concludes that there is a likelihood of continuation and recurrence of subsidisation should the measures in force be allowed to lapse.

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(151) 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 9(1) of the basic Regulation.

(152) 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 request for an expiry review and data collected from Union producers during the investigation. As indicated in recitals (12)-(14) 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**

(153) 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.

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(154) Union consumption developed as follows:

Table 1

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

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

4.3. **Imports of the product concerned from the USA**

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

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

Table 2

Import volume and market share

	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*

4.3.2.1. US domestic prices

(157) 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).

(158) 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

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sources is USD 1 196,93 per metric tonne. At the euro/dollar average exchange rate during the RIP (EUR 1 = USD 1,356), this amount corresponds to a US domestic sales price of EUR 883 per metric tonne ([27]).

4.3.2.2. US export prices and undercutting

(159) 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.

(160) 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 RIP. The Commission consulted the database of the United States International Trade Commission and extracted the quantities and 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 EUR 753,34.

Table 3

US export volumes and export prices during the RIP

Countries of destination	Export quantities (metric tonnes)	% of exports to all countries	Average value (USD) per metric tonne	Average value (EUR) per metric tonne
Total Gibraltar	76 266	13	753,19	555,45
Total Canada	247 959	44	1 167,33	860,86
Total Australia	4 267	1	1 019,77	752,04
Total Malaysia	103 773	18	891,44	657,41

(161) During the RIP the average export price of the US biodiesel to all destinations was USD 1 021,52 (EUR 753,34) 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 price. According to data obtained during the investigation, this would amount to approximately EUR 100 per metric tonne. It follows that an estimated export price to the Union would be undercutting the Union prices, as the average domestic price of biodiesel sold by the Union producers during the RIP was EUR 905 per metric tonne (see table 8 below).

(162) The US National Biodiesel Board (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

([27]) Due to a typographical error, the price mentioned in the Disclosure Document was wrongly indicated at EUR 884.

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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 is flawed

(163) The investigation demonstrated, as described above, that US export prices vary significantly depending on destination. Therefore, 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.

(164) With regard to the EUR 100 adjustment, the basis for the Commission's calculations was information provided by NBB itself. More specifically, the Commission used the amount for customs duties and for transport costs as provided by NBB (around EUR 94) and rounded it up to EUR 100, which would also take into account an amount for post-importation costs. The amount for post-importation costs as claimed by NBB (2 % of CIF frontier value or EUR 16,69) was disregarded since this amount was not substantiated.

(165) As far as the alleged price difference due to different feedstock is concerned, the Commission recalls that in the original investigation an 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, even if an 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. In any event, NBB claimed an adjustment of 10 %, but has not substantiated this level of the adjustment.

(166) It follows from the above consideration that NBB's claim that the undercutting analysis is flawed must be rejected.

4.3.3. *Imports from other third countries*

(167) 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

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	2011	2012	2013	RIP
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

(168) 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*

(169) In accordance with Article 8(4) 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.

(170) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers and the microeconomic 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.

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

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

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4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(173) 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)

(174) 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.

(175) 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.

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

(177) This claim cannot be accepted. Capacity utilisation is only one of many macroeconomic indicators that the Commission considers when analysing the overall situation of the Union industry. The

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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

(178) 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 %	75 %	86 %	89 %
Index	*100*	*98*	*112*	*117*

Source: Data provided by EBB (the applicant)

(179) 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 shares shows that current anti-dumping and anti-subsidy measures have had a positive effect for the Union industry.

4.4.2.3. Growth

(180) 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 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

(181) 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*

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	2011	2012	2013	RIP
Productivity (metric tonnes/ employee)	4 021	4 301	4 479	4 986
Index	*100*	*107*	*111*	*124*

Source: Data provided by EBB (the applicant)

(182) 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.

(183) 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 subsidy margin and recovery from subsidisation

(184) As mentioned above in recital (159) imports of biodiesel from the USA virtually ceased after the imposition of countervailing duties and there were virtually no subsidised imports from the USA during the review investigation period. Therefore, the magnitude of the subsidy margin 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 recovering from the effect of past subsidisation albeit it is still in a fragile and vulnerable economic situation.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

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

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*

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	2011	2012	2013	RIP
Unit cost of production	1 107	1 153	969	868
Index	*100*	*104*	*88*	*78*

Source: Verified data from sampled Union producers

(186) 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

(187) 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

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

4.4.3.3. Inventories

(189) 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
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

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(190) Stocks has 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

(191) 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

(192) 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.

(193) 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.

(194) 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.

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(195) 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 %.

(196) 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 IP was not based on questionnaire replies as alleged but on sampling data which, however, does not contain information relating to the IP 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*

(197) 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.

(198) 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, 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 under normal market conditions at 15 % ([28]). In a subsequent investigation concerning imports of biodiesel originating in Argentina and Indonesia, the profit level that the Union industry should reasonably expect to achieve under normal market conditions 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 established at 11 % ([29]).

(199) 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 measures currently 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,

([28]) Regulation (EC) No 598/2009, recitals (176)-(178).
([29]) Implementing Regulation (EU) No 1194/2013, recitals (202)-(208).

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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 of around 90 % when subsidised imports were absent from the Union market (2004-2006) and the Union industry was considered to be in a healthy situation ([30]).

(200) 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 effects of subsidised imports. It is still in an economically and financially fragile situation and the current positive trend could easily be reverted should subsidised imports from the USA recur in significant volumes.

5. LIKELIHOOD OF RECURRENCE OF INJURY

(201) 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 18(2) of the basic Regulation. In particular, the Commission analysed the likelihood of recurrence of subsidised imports, the volumes and the likely price levels thereof, spare capacity, the attractiveness of the Union market and pricing behaviour of US producers.

(202) As concluded above (recital (149)), it is likely that subsidised 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 exporting biodiesel to other third country markets at price levels that are below the Union prices. Since the Union prices are higher than those in other third country markets it is likely that at least some of those exports may be re-directed to the Union should the existing measures lapse.

(203) 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.

(204) 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 (161)

([30]) 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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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.

(205) Given that the Union market is the biggest market for biodiesel worldwide and with biodiesel prices in the Union 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. Indeed, historically, that has proven to be the case.

(206) 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. Given their current pricing behaviour on other export markets and the large spare capacity available it is very likely that significant volumes of US biodiesel would re-enter the Union market at a subsidised price equal to, or below the Union prices.

(207) Such imports would exercise a significant downward 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.

(208) 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**

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

6. **UNION INTEREST**

(210) In accordance with Article 31 of the basic Regulation, the Commission examined whether it would be against the Union interest to maintain the existing measures despite the findings above on the likely recurrence of injurious subsidisation. 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**

(211) The existing measures have contributed to an almost total reduction of subsidised 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 subsidisation, 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.

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(212) 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 subsidised 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**

(213) 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 an extension thereof 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 countervailing duties.

(214) 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**

(215) Only one user, an oil company which purchases biodiesel to blend with mineral oils, came forward and make their view known to the Commission. It was strongly in favour of maintaining the existing measures and claimed that their removal could have devastating effects on the Union biodiesel market leading to an in-flux of significant volumes of subsidised biodiesel which would result in a recurrence of severe injury to the Union biodiesel industry.

(216) 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 of their profitability or business. In any event, due to the stable or only slightly increase in 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.

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

6.4. **Conclusion on Union interest**

(218) 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.

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7. COUNTERVAILING MEASURES

(219) In view of the conclusions reached with regard to the likelihood of continuation or recurrence of subsidisation and injury, it follows that, in accordance with Article 18(1) of the basic Regulation, the countervailing duties applicable to imports of biodiesel originating in the USA, imposed by Regulation (EC) No 598/2009, as amended by Implementing Regulation (EU) No 443/2011, should be maintained for an additional period of five years.

(220) As outlined in recital (2) above, the countervailing 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.

(221) The countervailing 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.

(222) The exporting producers from Canada that were exempted from the measures, as extended by Implementing Regulation (EU) No 443/2011, shall also be exempted from the measures imposed by this Regulation.

(223) 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 countervailing 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 '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 (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), 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).

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2. The rates of the definitive countervailing 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	Countervailing duty rate EUR per tonne net	TARIC additional code
Archer Daniels Midland Company, Decatur	237,0	A933
Cargill Inc., Wayzata	213,8	A934
Green Earth Fuels of Houston LLC, Houston	213,4	A935
Imperium Renewables Inc., Seattle	216,8	A936
Peter Cremer North America LP, Cincinnati	211,2	A937
Vinmar Overseas Limited, Houston	211,2	A938
World Energy Alternatives LLC, Boston	211,2	A939
Companies listed in Annex I	219,4	See Annex I
All other companies	237,0	A999

The countervailing 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).

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 ([31]), the amount of countervailing 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.

([31]) 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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Article 2

▼M1

1. The definitive countervailing duty applicable to 'all other companies' as set out in Article 1, paragraph 2, is 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

The duty to be extended shall be the one established for 'All other companies' in Article 1(2) of Regulation (EC) No 598/2009, which is a definitive countervailing duty of EUR 237 per tonne net.

The countervailing 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 countervailing 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 exemptions granted to the companies listed in paragraph 1 or authorised by the Commission in accordance with Article 5(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall

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conform to the requirements set out in Annex II. If no such invoice is presented, the countervailing duty as imposed by paragraph 1 shall apply.

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

Article 3

1. The definitive countervailing 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), ex 3826 00 90 (TARIC code 3826 00 90 30).

The countervailing 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 down in Article 145, paragraphs 2 and 3 of Regulation (EEC) No 2454/93, the amount of the countervailing 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:

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European Commission
Directorate-General for Trade
Directorate H
Office: Rue de la Loi 170, CHAR 04/034
1049 Brussels
BELGIUM
e-mail: TRADE-TDI-INFORMATION@ec.europa.eu

2. In accordance with Article 23(6) of Regulation (EC) No 597/2009, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the countervailing measures imposed by Regulation (EC) No 598/2009, 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
AC & S Inc.	Nitro	A941
Alabama Clean Fuels Coalition Inc.	Birmingham	A940
American Made Fuels, Inc.	Canton	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
BioPur Inc.	Bethlehem	A941
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
Freedom Fuels LLC	Mason City	A941

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Company Name	City	TARIC additional code
Fuel & Lube, LLC	Richmond	A940
Fuel Bio	Elizabeth	A940
FUMPA Bio Fuels	Redwood Falls	A940
Galveston Bay Biodiesel LP (BioSelect Fuels)	Houston	A940
GeoGreen 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
Integrity Biofuels	Morristown	A941
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	Claypool	A940
Louis Dreyfus Claypool Holdings LLC	Claypool	A940
Middle Georgia Biofuels	East Dublin	A940
Middletown Biofuels LLC	Blairsville	A940
Musket Corporation	Oklahoma City	A940
Natural Biodiesel Plant LLC	Hayti	A941
New Fuel Company	Dallas	A940
North Mississippi Biodiesel	New Albany	A940
Northern Biodiesel, Inc.	Ontario	A940
Northwest Missouri Biofuels, LLC	St. Joseph	A940

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Company Name	City	TARIC additional code
Nova Biofuels Clinton County LLC	Clinton	A940
Nova Biosource	Senaca	A940
Organic Fuels Ltd	Houston	A940
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
Piedmont Biofuels Industrial LLC	Pittsboro	A941
Pinnacle Biofuels, Inc.	Crossett	A940
PK Biodiesel	Woodstock	A940
Pleasant Valley Biofuels, LLC	American Falls	A940
Prairie Pride	Deerfield	A941
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
Seminole Biodiesel	Bainbridge	A940
Southeast BioDiesel LLC	Charlotte	A941
Soy Solutions	Milford	A940
SoyMor Biodiesel LLC	Albert Lea	A940
Stepan Company	Northfield	A941
Sunshine BioFuels, LLC	Camilla	A940
TPA Inc.	Warren	A940
Trafigura AG	Stamford	A940

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Company Name	City	TARIC additional code
U.S. Biofuels Inc.	Rome	A940
United Oil Company	Pittsburgh	A940
Valco Bioenergy	Harlingen	A940
Vanguard Synfuels, LLC	Pollock	A940
Vitol Inc.	Houston	A940
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
Yokaya Biofuels Inc.	Ukiah	A941

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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(2), Article 2(2) or Article 3(2):

— 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.’