FOR INSPECTION BY INTERESTED PARTIES

Please note that this is a consolidated version of the original expiry review request submitted on 10/06/2020 and additional information provided by the applicant afterwards.

KING & SPALDING

To the Commission of the European Union

REQUEST FOR AN EXPIRY REVIEW

OF THE COUNTERVAILING DUTIES APPLICABLE TO IMPORTS OF BIODIESEL ORIGINATING IN THE UNITED STATES OF AMERICA

Under Regulation (EU) 2016/1037 of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (as amended)

Submitted by

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VERSION OPEN FOR CONSULTATION

10 June 2020

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TABLE OF CONTENTS

1. INTRODUCTION

1. The European Biodiesel Board ("EBB" or "the Applicant") hereby requests according to Article 18 of Regulation (EU) 2016/1037 of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, as amended (the "basic Regulation"), the initiation of an expiry review of the countervailing measures applicable to imports of biodiesel originating in the United States of America ("USA") imposed by Council Regulation (EC) No 598/2009[1] ("the Regulation imposing definitive countervailing duties"), with the aim of extending the existing measures for another five-year period.

2. On 7 July 2009, the EU institutions imposed definitive countervailing duties on biodiesel imports from the USA in pure form or in a blend containing by weight more than 20% of biodiesel[2]. The countervailing duty rates were as follows:

Company	Injury margin	Subsidy margin	Countervailing duty rate
Archer Daniels Midland Company	54,5%	35,1%	35,1%
Cargill Inc.	64,4%	34,5%	34,5%
Green Earth Fuels of Houston LLC	51,3%	39,0%	39,0%
Imperium Renewables Inc.	41,6%	29,1%	29,1%
Peter Cremer North America LP	77,2%	41,0%	41,0%
Vinmar Overseas Limited	76,4%	41,1%	41,1%
World Energy Alternatives LLC	46,1%	37,6%	37,6%
Cooperating non sampled companies	56,2%	36,0%	36,0%

Source: Source: Regulation imposing definitive countervailing duties, Recital (183)

3. Immediately after the imposition of definitive countervailing duties, EBB noticed that US exporters **were circumventing these measures** - either through transshipment via Canada or through imports of blends below 20% of biodiesel - which seriously undermined their remedial effects. Following a circumvention request lodged by EBB, the EU institutions extended on 5 May 2011 the definitive countervailing duties on biodiesel imports originating in the USA to imports of biodiesel consigned from Canada – whether declared as originating in Canada or not – and to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the USA[3].

[1] 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 July 2009, p.1

[2] The EU institutions also imposed anti-dumping duties on biodiesel imports from the USA. See Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America, OJ L 179, 10 July 2009, p.26

[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 anti- dumping 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 May 2011 ("the Regulation imposing anti-circumvention duties"), p.1

4. On 4 October 2013, the EU Commission published the notice of the impending expiry of certain countervailing measures[4]. Since EBB had evidence that injurious subsidization would recur in the absence of countervailing measures on biodiesel imports from the USA, it filed on 9 April 2014 a request for an expiry review of the countervailing measures applicable to biodiesel imports from the USA. The expiry review investigation initiated by the EU Commission on 10 July 2014[5] confirmed the likelihood of recurrence of injurious subsidization should the measures be allowed to expire. Accordingly, through Regulation (EU) 2015/1519 of 14 September 2015, the EU Commission extended the countervailing duties on biodiesel imports from the USA for another five-year period[6] ("the Regulation extending the countervailing duties following an expiry review").

5. The countervailing measures on biodiesel imports from the USA are set to lapse on 16 September 2020[7]. However, for the reasons set out in the present request, the Applicant is strongly convinced that the removal of the countervailing duty would inevitably lead to a recurrence of subsidization and material injury to the EU biodiesel industry.

6. Therefore, the Applicant, on behalf of the EU producers of biodiesel, requests the EU Commission to initiate an expiry review of the countervailing measures applicable to imports of biodiesel originating in the USA, with a view to renew these measures for another five-year period.

7. In addition to this request, EBB is also filing a separate request for an expiry review of the anti-dumping duties applicable to biodiesel imports originating in the USA.

2. GENERAL INFORMATION

2.1 The EU industry

2.1.1 The Applicant

8. The request is submitted by:

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1040 Brussels - Belgium
Tel: +32 (0)2 763 24 77
Fax: +32 (0)2 763 04 57
Contact Persons: Kristell Guizouarn (EBB President), André P. Santos (Public Affairs Director EBB)
Email: ebb@ebb-eu.org; aps@ebb-eu.org

9. The Applicant is represented by:

[4] Notice of the impending expiry of certain countervailing measures (2013/C 289/06), OJ C 289, 4 October 2013, p.11
[5] Notice of initiation of an expiry review of the countervailing measures applicable to imports of biodiesel originating in the United States of America, OJ C 217, 10 July 2014, p.25
[6] 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 September 2015, p.99 (the "2015 Regulation extending the countervailing measures")
[7] Notice of the impending expiry of certain countervailing measures (2020/C 18/04), OJ C 18, 20 January 2020, p.19

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Annex No 1: Power of Attorney

2.1.2 **Representativeness**

10. EBB is an international association established under the laws of Belgium with its registered office at Boulevard Saint Michel 34, 1040 Brussels, Belgium. It has 45 member companies and associations located in 18 EU Member States. EBB brings together European biodiesel producers and represents almost 70% of the EU's biodiesel producing companies and output. EBB aims to promote the use of biodiesel in the European Union and to defend the interests of the European biodiesel industry.

Annex No 2: EBB Statutes
Annex No 3: List of EBB members and associates

11. EBB is filing this request following the decision of the EBB's Executive Board meeting on 31 January 2020 to lodge an expiry review of the countervailing duties applicable to imports of biodiesel originating in the USA

Annex No 4: Extracts from the minutes of the EBB's Executive Board meeting

12. This request is filed by EBB on behalf of 14 EBB member companies representing 31% of the total EU production and is supported by 14 other EBB members, thus leading to an overall level of support for the request of approximately 53% of the total EU biodiesel production.

Annex No 5: Macro data including production (Source: EBB)
Annex No 6: List of Applicants
Annex No 7: List of EU biodiesel producers supporting the expiry review request
Annex No 8: Confidentiality requests

13. The Applicant's data provided for the purpose of this request constitutes the aggregated data of 14 companies, i.e. the micro-indicators. As seen in the list of Applicants as attached in Annex 6, the companies composing the Applicants amounted in 2019 to approximately 31% of total EU production and are representative for a number of reasons, such as:

- They include companies with very large production volumes;
- Geographical diversity has been taken into account. The companies concerned have biodiesel production plants located in the north, south, east and west of the European Union;
- The size of the companies was also taken into consideration. The companies concerned include both large and smaller companies.

2.1.3 **Other biodiesel producers in the EU**

14. To the best of the Applicant's knowledge, there are no EU biodiesel producers that are not EBB members which oppose this request for an expiry review.

15. A list of other known EU biodiesel producers which are not EBB members is attached to this request.

Annex No 9: List of known EU producers which are not EBB members

2.1.4 **Interim conclusion**

16. The Applicant is therefore acting on behalf of the EU biodiesel industry and fulfils the representativeness requirement as set out in Article 5 of the Basic Regulation.

2.2 **The product concerned**

2.2.1 **Definition**

17. The product is the same as in the investigation leading to the imposition of the existing measures, 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.

2.2.2 **Customs classification**

18. In the 2015 Regulation extending the countervailing measures, the product concerned fell within the following CN codes of the EU combined nomenclature: 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.

19. Since then, there have been changes in the EU combined nomenclature. The correlation table below identifies the modifications made in the EU combined nomenclature with respect to CN codes applicable to biodiesel:

CN codes applicable to biodiesel – Correlation table		
2015 Combined nomenclature	**2020 Combined Nomenclature[8]**	**Changes made to the EU combined nomenclature**
ex 1516 20 98	ex 1516 20 98	-
ex 1518 00 91	ex 1518 00 91	-
ex 1518 00 99	ex 1518 00 99	-
ex 2710 19 43	ex 2710 19 43	-
ex 2710 19 46	ex 2710 19 46	-
ex 2710 19 47	ex 2710 19 47	-
ex 2710 20 11	ex 2710 20 11	-
ex 2710 20 15	ex 2710 20 16	As from 1/01/2020, CN codes 2710 20 15 and 2710 20 17 merged in a new CN Code 2710 20 16
ex 2710 20 17		
ex 3824 90 92	ex 3824 99 92	As from 1/01/2017[9], CN code 3824 90 92 ceased to exist and was replaced by CN code 3824 99 92[10]

[8] Applicable as from 1 January 2020. See Commission implementing Regulation 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 280, 31 October 2019, p. 1–1042.

[9] Commission implementing Regulation 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 294, 28 October 2016, p. 1–956

[10] CN code 3824 99 92 is "*Chemical products or preparations, predominantly composed of organic compounds, in liquid form at 20°C, n.e.s.*"

ex 3826 00 10[11]	3826 00 10	-
ex 3826 00 90	ex 3826 00 90	-

20. Given the above, the product concerned currently falls within the following CN codes of the EU combined nomenclature: 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 16, ex 3824 99 92, 3826 00 10 and ex 3826 00 90.

2.2.3 **Product description and process**

21. Biodiesel is a renewable fuel produced from a wide range of raw materials, i.e. vegetable oils such as rapeseed oil, soybean oil, palm oil, used frying oils (UFO), animal fats or biomass[12].

22. Biodiesel is intended for diesel engines and can be blended with petroleum diesel in any percentage, from 1 to 99 percent (represented by a number following a B, i.e. B5, B20, B100).

23. Biodiesel produced in the United States is primarily made from soybean oil (SME) although other types of raw materials are also used. In the EU, biodiesel is mainly produced from rapeseed oil (RME) but other feedstocks are also used.

24. Biodiesel belongs to the category of "Fatty Acid Methyl Ester" (FAME). The term "fatty acid" refers to the fact that vegetable oils contain a varying proportion of saturated, monounsaturated and polyunsaturated fatty acids. The term "esters" refers to the transesterification of vegetable oils, namely, the mingling of vegetable and/or animal oils or fats with alcohol, which produces biodiesel and as a by-product, glycerine. The term "methyl" refers to methanol, the most commonly used alcohol in the process, although ethanol can also be used in the process, resulting in "fatty acid ethyl esters" (FAEE). Although the transesterification process is a relatively simple chemical reaction, it is particularly difficult to conduct it properly, which calls for the highest industrial standards to ensure the quality of biodiesel.

25. Other new production pathways such as hydro-treated vegetable oils (HVOs) or "renewable diesel", and biomass-to-liquid (BTL) have also been developed.

26. The hydrogenation of vegetable oils (HVOs) and animal fats produces paraffinic biodiesel. Although hydro-treated vegetable oils in Europe are produced in free-standing facilities, this process can run on existing crude oil refinery infrastructures. To avoid any confusion with processes used in the food industry sector, the term "hydro-treatment" is preferred to “hydrogenation”.

27. Biomass to liquid (BTL) is a multi-steps process to produce liquid biofuels from biomass, by using whole plants (biomass), including agricultural and forest residues. The so-called "Fischer-Tropsch" technology, which is an integral part of the BTL process, is an advanced biofuel conversion technology that comprises gasification of biomass feedstock, cleaning and conditioning of the produced synthesis gas, and subsequent synthesis to liquid (or gaseous) biofuels.

28. FAME, HVOs as well as BTL biodiesel can be blended with conventional diesel and share a set of common properties, including:

[11] CN code ex 3826 00 10 replaced CN code 3824 90 91 used in the original investigation.
[12] Depending on the resources available in each country and/or region, biodiesel is made from different primary raw materials.

- A near zero sulphur content;
- A high cetane number (higher than conventional diesel);
- A low level of polycyclic aromatics hydrocarbons (PAHs) content.

29. From the perspective of the end-user of diesel fuel, it makes no difference whether the blend available at the pump has been produced using FAME, HVOs or BTL.

2.2.4 Uses

30. Biodiesel is used in the transport sector, mainly blended with mineral diesel (i.e. petroleum/conventional diesel) and very marginally in its pure form (B100).

31. Modifications to conventional engines (seals, piping) are required for use at 100% pure biodiesel. When blended with mineral diesel, no modification of conventional diesel engines is required if the biodiesel content is limited.

32. The use of biodiesel blended with diesel up to 7% of FAME as a transport fuel does not require any modification in the distribution system, therefore avoiding expensive infrastructure changes.

33. In view of its main technical specifications, biodiesel is a very efficient fuel. Compared to mineral diesel, biodiesel presents specific features, namely:

- it performs better than diesel because of higher oxygen content and higher cetane number, which guarantees better fuel combustion, reduces the consumption and prolongs the lifetime of the engine; it also provides a good indication of the level of particulate emissions;
- it increases lubricity and can contribute to longer fuel injector life (by avoiding wear in the engine);
- it is almost free of sulphur;
- it contains fewer aromatic hydrocarbons;
- it has a low vapour pressure;
- it is a better solvent than diesel (cleans the engine);
- it is classified as a non-toxic product (level 1 for water toxicity);
- it is biodegradable within 28 days;
- it has high ignition point and is thus easier to store from a safety perspective;
- it contains fewer polycyclic aromatic hydrocarbons than conventional diesel; and
- it significantly reduces CO2 emission.

34. Trials are ongoing to introduce biodiesel for air transport in order to reduce GHG emissions by the air industry and reduce dependence on fossil fuels.

2.2.5 Like product

35. As recalled in the 2015 investigation extending the countervailing measures, biodiesel produced in the EU is considered as a like product with biodiesel produced in the USA. Biodiesel produced in the EU and biodiesel imported from the USA share similar basic characteristics.

36. As mentioned above, different feedstock may serve for the production of biodiesel. In the USA, biodiesel is primarily made from soybean oil although other types of raw materials are used for the biodiesel production. In the EU, biodiesel is produced mainly from rapeseed oil

but other feedstocks are also used. RME and SME both belong to the category of fatty acid methyl esters (FAME).

37. Since the 2015 Regulation extending the countervailing measures, there has been no significant technological evolution in the production process of biodiesel which would lead to a different conclusion.

38. Accordingly, biodiesel produced in the EU and in the USA are considered as like products for the purposes of the present request.

2.3 US exporting producers, importers and users

39. This request targets imports of the product concerned from the USA. The Applicant provides a list that identifies biodiesel producers in the USA as well as the contact details of the US biodiesel association ("National Biodiesel Board").

Annex No 10: List of biodiesel producers in the USA

40. Biodiesel is sold either through trading companies or directly from biodiesel producers to oil refineries. Both the trading companies and the oil refineries can be considered as importers, actual or potential, of the product concerned.

Annex No 11: List of known trading companies involved with the import of biodiesel into the EU

Annex No 12: List of main known importers and users of the product concerned in the EU

2.4 Periods examined in this Request

41. The investigation period (the "IP") used in this request is the entire year 2019. The period considered to assess injury is the period from 01-01-2017 until the end of the IP.

3. LIKELIHOOD OF RECURRENCE OF SUBSIDIZATION

42. The Applicant has gathered evidence showing that the US biodiesel industry is still heavily subsidized. This evidence confirms that since the imposition of countervailing duties in 2009, there has been no fundamental change in the situation of the US biodiesel industry which still benefit from massive subsidies to stay in business.

43. The Biodiesel Mixture Credit - which is the most important direct subsidy granted to the US biodiesel industry – has been available since 2005 and has recently been reinstated for a 5-year period, showing the long-term strategy of the US government to unfairly subsidize its biodiesel sector. In addition, several other subsidy schemes – both at the Federal or State levels – are still available to the US biodiesel industry. The Applicant has even reasons to believe that the level of subsidies enjoyed by US biodiesel producers have increased over these past years.

44. Below, the Applicant will:

- Review the subsidy schemes previously found countervailable by the EU Commission; (**3.1**)

– Analyze additional subsidies that may have been enjoyed by the US biodiesel industry during the investigation period. (**3.2**)

3.1 Review of the subsidy schemes previously found countervailable by the EU Commission

45. In the USA, subsidies dedicated for companies involved in the biodiesel activities are available both at the federal level and at the State level.

3.1.1 Federal subsidies

46. During the 2015 expiry review investigation on biodiesel imports from the USA, the EU Commission confirmed that four federal schemes were still available to the US biodiesel industry and were countervailing subsidies within the meaning of the Basic Regulation:

- the Biodiesel Mixture Credit;
- The Biodiesel Credit;
- the Small agri-biodiesel producer income tax credit; and
- the USDA bioenergy programme for advanced biofuels.

47. As developed below, these four federal subsidies are still applicable as of the date of today and will remain available to the US biodiesel industry in the coming years.

3.1.1.1 The Biodiesel Mixture Credit

48. The countervailable subsidies in the original investigation mainly derived from the Biodiesel Mixture Credit scheme. As shown in the table below, the subsidy rate calculated by the EU Commission for this subsidy scheme ranged between 28,4% and 41,1% among the sampled US biodiesel exporting producers:

Scheme / Company	Biodiesel tax Credit	Small Agri-biodiesel Producer Income Tax credit	Missouri qualified producer incentive fund	Texas fuel ethanol and biodiesel production incentive program	Washington state biofuels production tax exemption	**Total**
Archer Daniels Midland Company	31,3%		3,8%			**35,1%**
Cargill Inc.	34,1%	0,4%				**34,5%**
Green earth Huels of Houston LLC	38,7%					**39,0%**
Imperium Renewables Inc.	28,4%				0,7%	**29,1%**
Peter Cremer North America LP	41,0%					**41,0%**
Vinmar Overseas Limited	41,1%					**41,1%**
World Energy Alternatives LLC	37,6%					**37,6%**

Source: 2009 Regulation imposing definitive countervailing duty, Recital (69)

49. Title 26, Section 40A (b)(1) of the US Code (USC) is the legal basis for the Biodiesel Mixture Credit and provides that:

"*(1) Biodiesel mixture credit*
(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.
(B) Qualified biodiesel mixture
The term "qualified biodiesel mixture" means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which-
(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
(ii) is used as a fuel by the taxpayer producing such mixture.
(C) Sale or use must be in trade or business, etc.
Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account-
(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
(ii) for the taxable year in which such sale or use occurs.
(D) Casual off-farm production not eligible
No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture".

Annex No 13: Title 26, Section 40A of the US code

50. The Biodiesel Mixture Credit scheme provides a credit of **$1.00** for each gallon of biodiesel used to create a mixture of biodiesel and diesel fuel that is sold as a fuel. This subsidy thus amounts **to 300 $ for each tonne of biodiesel mixed with diesel fuel**[13] which gives an order of magnitude of the significant subsidies granted to the US biodiesel industry under this scheme.

51. The final tax credit for the blended fuel depends on the proportion of biodiesel it contains. The most common practice is to add 0,1% mineral diesel to 99,9% biodiesel (known as "B99") as this ensures that the maximum tax credit is obtained. It is the activity of blending that triggers the eligibility for the credit. The producers of biodiesel can claim the incentive when they are themselves performing a blending activity.

52. 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.

53. The Biodiesel Mixture Credit has been in place in the US Federal legislation since 2005[14]. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this tax credit was due to expire on 31 December 2009[15]. However, this subsidy scheme has never expired and have been instead repeatedly reinstated retroactively until now.

54. As shown in the summary table below, this subsidy scheme has expired **six times since 2005 and was always eventually retroactively reinstated**:

[13] 1 gallon = 3,7854 liters. 1136 litres = 1 tonne. Thus, 1$/gallon = (1/3,7854*1136) = 300 $/MT
[14] Established in 2005 by the American Jobs Creation Act of 2004, §302 (P.L. 108-357), See ***Annex No 14***; extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58). See ***Annex No 15***
[15] See Section 202(a) of the Energy Improvement and Extension Act 2008 (P.L. 110-343, Division B). See ***Annex No 16***

Renewal and expiration of the Biodiesel Mixture Credit ("the 1$/gallon subsidy")	**Date**
Implementation of the 1$/gallon subsidy and amendment of the 1$/gallon subsidy	2005 and 2008
Expiration of the 1$/gallon subsidy	31 December 2009
Retroactive reinstatement of the 1$/gallon subsidy and extension[16]	In 2010, until 31 December 2011
Expiration of the 1$/gallon subsidy	31 December 2011
Retroactive reinstatement of the 1$/gallon subsidy and extension[17]	2 January 2013, until 31 December 2013
Expiration of the 1$/gallon subsidy	31 December 2013
Retroactive reinstatement of the 1$/gallon subsidy and extension[18]	19 December 2014, until 31 December 2014
Expiration of the 1$/gallon subsidy	31 December 2014
Retroactive reinstatement of the 1$/gallon subsidy and extension[19]	18 December 2015, until 31 December 2016
Expiration of the 1$/gallon subsidy	31 December 2016
Retroactive reinstatement of the 1$/gallon subsidy and extension[20]	9 February 2018, until 31 December 2017
Expiration of the 1$/gallon subsidy	31 December 2017
Retroactive reinstatement of the 1$/gallon subsidy and extension[21]	20 December 2019, until 31 December 2022
Expiration of the 1$/gallon subsidy	31 December 2022

55. Recently, the 1$/gallon subsidy has been reinstated by the Further Consolidated Appropriations Act by the U.S. Congress **on 20 December 2019 until 31 December 2022**[22]. This 5-year extension is the longest extension provided since the implementation of this subsidy. As noted by the Biodiesel Magazine in a press release dated 20 December 2019, "*Never in its 15-year history has the biodiesel tax credit been given such a long duration*".

Annex No 23: Biodiesel Magazine, Historic 5-year extension of biodiesel tax credit signed into law, 20 December 19

56. The retroactive reinstatement of the Biodiesel Mixture Credit was crucial for the viability of the US biodiesel industry. To insist on the vital importance of a retroactive reinstatement of the Biodiesel Mixture Credit, the National Biodiesel Board (NBB) released in November 2019 a report entitled "*The Importance of the Biodiesel Tax Credit*". This report concluded that "*[t]he biodiesel tax credit is essential to maintaining the profitability and ongoing growth of the U.S. biodiesel industry […] In other words the biodiesel tax credit over the last three years has been able to lift biodiesel producers above the breakeven point and incentivize some moderate expansion*".

Annex No 24: Report from ABF Economics, the importance of the Biodiesel Tax Credit, 24 July 2019

[16] Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 17 December 2010 (P.L. 111-312, §701). See ***Annex No 17***
[17] American Taxpayer Relief Act of 2 January 2013, retroactive for 2012 (P.L. 112-240, §405), ***Annex No 18***
[18] Tax Increase Prevention Act of 19 December 2014 (Public law 113-295, Division A, §153), ***Annex No 19***
[19] Consolidated Appropriations Act of 18 December 2015 (Public law 114–113, §185(b)(1)), ***Annex No 20***
[20] Bipartisan Budget Act of 9 February 2018 (Public law 115–123, §40407(b)(1)), ***Annex No 21***
[21] Further Consolidated Appropriations Act of 20 December 2019 (P.L. 116-94, Division Q, §121(b)(1)(A)), ***Annex No 22***
[22] Please refer to ***Annex No 22***

57. The biodiesel tax credit thus keeps afloat an industry which would otherwise have significantly reduced. As reported by the ICIS in a press release dated 21 November 2019 "*US biodiesel production is likely to decline further if the lapsed $1/gal tax credit is not reinstated as part of the government's spending budget for the next fiscal year*".

Annex No 25: ICIS, US biodiesel production likely to continue declining on lapsed tax credit, 21 November 2019

58. This phenomenon has been particularly highlighted in a report dated April 2019 released by the Taxpayers for Common Sense organization, which specified that "*[i]n addition to its mounting cost, the biodiesel tax credit distorts fuel markets by incentivizing production that would not otherwise occur […] Biodiesel subsidies have allowed the federal government to pick winners and losers, distort energy and agriculture markets, and contribute to the expansion and overproduction of biodiesel, all at great cost to taxpayers"*

Annex No 26: Report of Taxpayers for Common Sense, April 2019

59. The same 2019 report stressed that "*[i]n years when subsidies are larger and more predictable, the industry responds with higher production levels to take advantage of billions of dollars in federal tax credits and other incentives*[23]". Since the Biodiesel Mixture credit was retroactively reinstated until 31 December 2022 and thus provide strong predictability for US biodiesel producers, it is expected that the US biodiesel industry will take advantage of this subsidy to increase substantially production and possibly capacity. Should the countervailing measures be lifted, it is highly likely that US unfair imports will enter again the EU market in significant volumes and at subsidies prices.

60. The Biodiesel Mixture Credit is a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the Basic Regulation. In fact, this scheme provides a financial contribution by the US Government that has to be regarded as a fiscal incentive either given as a cash payment or as an offset against tax liabilities. This subsidy confers a benefit on the companies receiving them. Finally, this subsidy scheme is limited to companies that are involved in the biodiesel industry and are thus specific and countervailable under Article 4(2)(a) of the basic Regulation.

3.1.1.2 **The Biodiesel Credit**

61. Title 26, Section 40A (b) (2) of the US Code (USC) is the legal basis for the Biodiesel Credit and provides that:

"(2) Biodiesel credit
(A) In general
The biodiesel credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year-
(i) is used by the taxpayer as a fuel in a trade or business, or
(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.
(B) User credit not to apply to biodiesel sold at retail
No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii)[24]".

[23] See ***Annex No 26***
[24] See ***Annex No 13*** - Title 26 Section 40A of the US code

62. The Biodiesel Credit provides a credit of $**1 per gallon** for all types of unmixed (neat) biodiesel placed into the fuel tank of a vehicle or used as fuel[25]. Before the Emergency Economic Stabilization Act of 3 October 2008, the prevailing biodiesel credit was $1 per gallon of unmixed agri-biodiesel[26] or $0,50 for each gallon of other unmixed biodiesel. The Biodiesel Credit is a non-refundable income tax credit for retailers or end-users of 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 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-users' gas tank) or an end-user (e.g. putting the biodiesel into his own vehicles). The incentive can be claimed as a credit against excise or income tax liability or as a direct cash payment.

63. Like the Biodiesel Mixture Credit, the Biodiesel Credit has been in place in the US Federal legislation since 2005[27]. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this tax credit was due to expire on 31 December 2009[28]. However, this subsidy scheme has never expired and have been instead repeatedly reinstated retroactively until now. The Further Consolidated Appropriations Act by the U.S. Congress date 20 December 2019 retroactively reinstated this subsidy scheme until 31 December 2022.

64. The Biodiesel Credit scheme is a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(1)(a)(ii) of the Basic Regulation (depending if it claimed as a credit against tax liability or as a direct cash payment). In fact, this scheme provides a financial contribution by the US Government in the form of revenue foregone which is otherwise due (tax offset). This subsidy confers a benefit on the companies receiving them. Finally, this subsidy scheme is limited to companies that are involved in the biodiesel industry and are thus specific and countervailable under Article 4(2)(a) of the basic Regulation.

3.1.1.3 **Small agri-biodiesel producer income tax credit**

65. The Small Agri-biodiesel Producer Income tax credit has been introduced in the US Federal legislation by the Energy Policy Act of 2005[29]. Like the Biodiesel Mixture Credit described above, it is part of the biodiesel fuels credit under Title 26 (Internal Revenue Code), Section 40A (b)(4) of the US Code which provides that:

(4) Small agri-biodiesel producer credit
(A) In general

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[25]While the original investigation of the Commission revealed that none of the examined US producers availed themselves of the biodiesel credit with respect to unmixed (neat) biodiesel, the 2015 expiry review revealed, on the basis of the information provided by the US authorities, that some biodiesel producers benefitted from this subsidy scheme: "*[t]he 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*".

[26] According to the US law, "*the term "agri-biodiesel" means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats*" (Title 26, Section 40A (d)(2) of the US Code).

[27] Established in 2005 by the American Jobs Creation Act of 2004, §302 (P.L. 108-357), See ***Annex 14***; extended by the Energy Policy Act of 2005, §1344 (P.L. 109-58). See ***Annex No 15***

[28] See Section 202(a) of the Energy and Improvement and Extension Act 2008 (P.L. 110-343, Division B). See ***Annex No 16***

[29] Energy Policy Act of 2005, §1345 (P.L. 109-58); amended by the Energy Improvement and Extension Act of 2008 (P.L. 110-343, Division B), §202-203; extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), §701

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.
(B) Qualified agri-biodiesel production
For purposes of this paragraph, the term "qualified agri-biodiesel production" means any agribiodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year-
(i) is sold by such producer to another person-
(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),
(II) for use by such other person as a fuel in a trade or business, or
(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or
(ii) is used or sold by such producer for any purpose described in clause (i).
(C) Limitation
The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons"[30].

66. Under this scheme, a small agri-biodiesel producer may be eligible for a tax incentive in the amount of $0.10 per gallon of agri-biodiesel[31] that is (i) sold and used by the purchaser in the purchaser's trade or business to produce an agri-biodiesel and diesel fuel mixture; (ii) sold and used by the purchaser as a fuel in a trade or business; (iii) sold at retail for use as a motor vehicle fuel; (iv) used by the producer in a trade or business to produce an agri-biodiesel and diesel fuel mixture; or (v) used by the producer as a fuel in a trade or business. A small producer is one that has, at all times during the taxable year, not more than 60 million gallons of productive capacity of any type of agri-biodiesel.

67. According to Section 202(a) of the US Energy and Improvement and Extension Act 2008, this subsidy scheme was supposed to expire on 31 December 2009[32]. However, this subsidy has never expired and has been repeatedly reinstated retroactively. Just like the Biodiesel Mixture Credit, this subsidy has expired six times since its implementation and has always been retroactively reinstated.

68. Recently, the Small Agri-biodiesel Producer Credit has been recently reinstated retroactively until 31 December 2022 by the Further Consolidated Appropriations Act dated 20 December 2019[33].

69. The Small Agri-biodiesel Producer Income Tax Credit is a subsidy within the meaning of article 3(1)(a)(ii) of the basic Regulation. This subsidy scheme provides a financial contribution by the US Government in the form of revenue forgone which is otherwise due. This subsidy confers a benefit on the companies receiving them. In addition, this scheme is limited to companies that produce biodiesel and is therefore specific and countervailable under article 4(2)(a) of the basic Regulation.

[30] See ***Annex No 13***
[31] The term "agri-biodiesel" means "*biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats*". ***See Annex 13*** - Title 26, Section 40 A of the US code.
[32] See Section 202(a) of the Energy and Improvement and Extension Act 2008, See ***Annex No 16***
[33] See ***Annex No 22***.

3.1.1.4 **USDA Bioenergy Programme for advanced biofuel**

70. The US Department of Agriculture ("USDA") Bioenergy programme for advanced biofuel ("BPAB") has been established by Title IX, Section 9005 of the Farm Security and Rural Investment Act of 2002 and is currently codified under Title 7, Section 8105 of the US Code.

Annex No 27: Title 7, Section 8105 of the US code

71. The USDA BPAB provides direct grants to producers of advanced biofuels which are generally defined as fuel derived from biomass other than corn kernel starch[34]. An advanced biofuel producer can be an individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint-stock company, governmental entities, schools and other types of educational facilities, group of organizations or a nonprofit entity that produces and sells an advanced biofuel. The goal of this programme is to increase the production of advanced biofuels[35]. It is administered by the Rural Business-Cooperative Service (RBS).

72. While this subsidy scheme was supposed to expire in 2012, it was extended for one year in 2013[36] and then for 5 years as from 2014[37] until the end of 2018. More recently, the Agriculture Improvement Act dated 20 December 2018 extended this subsidy programme for another 5 years, i.e. **until the end of 2023**[38].

73. On 18 December 2019, the USDA's Rural Business Cooperative Service published a notice seeking applications from biofuel producers under the USDA BPAB: 2020 applications had to be submitted to the USDA Rural Development State Officer for the state where the producer is located and be received by 4:30 local time on 18 February 2020.

Annex No 32: Biodiesel Magazine, USDA seeks applications for advanced biofuel payment program, 24 December 2019

74. Funds available to be distributed under the USDA BPAB amount to $7 000 000 for each of fiscal years 2019 through 2023 (mandatory funding), plus a discretionary amount of $20 000 000 for each of fiscal years 2019 through 2023 which is authorized to be appropriated to carry out the programme (discretionary funding), i.e. a total of $27 000 000 by year. However, 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[39].

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[34] According to the Code of Federal Regulations (CFR), Title 7 Part 4288.102 of the US code : Advanced biofuel is "*[a] fuel that is derived from renewable biomass, other than corn kernel starch, to include:*
(1) Biofuel derived from cellulose, hemicellulose, or lignin;
(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);
(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;
(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or
(7) Other fuel derived from cellulosic biomass". See ***Annex No 28*** – CFR 7 Part 4288.102
[35] See ***Annex No 29*** – USDA Rural Development website, Advanced Biofuel Payment Programme.
[36] American Taxpayer Relief Act of 2 January 2013 (Public law 112-240, §701(f)(4)), See ***Annex No 18***.
[37] Agricultural Act of 7 February 2014 (Public law 113–79, §9005(2), See ***Annex No 30***.
[38] Agriculture Improvement Act of 2018 (Public law 115–334), §9005(2)(B), See ***Annex No 31***.
[39] Title 7, Section 8105 (g) of the US Code.

75. The USDA BPAB is a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the US Government in the form of a direct grant. The incentive confers a benefit on the companies receiving them. The scheme is limited to companies that produce advanced biofuels and is therefore considered to be specific and thus countervailable under Article 4(2)(a) of the basic Regulation.

3.1.2 State subsidy schemes

76. During the 2015 expiry review investigation, the EU Commission found that the following four state schemes were available to the US biodiesel industry and were countervailing subsidies within the meaning of the Basic Regulation:

- The Florida Biofuels Investment Tax Credit;
- The Iowa Biodiesel Producer Tax Refund;
- The Kansas Qualified Biodiesel Fuel Producer Incentive; and
- The Kentucky Biodiesel Production Tax Credit.

77. Other subsidy schemes were also investigated by the EU Commission at that time but the EU Commission concluded that they were either inactive, had expired before the RIP or did not provide any benefits to US biodiesel producers.

78. The Applicant has made a full review of the state subsidy schemes already investigated by the EU Commission in its 2015 expiry review investigation and has found that the following state subsidy schemes are still available to the US biodiesel industry:

- The Iowa Biodiesel Producer Tax Refund; (3.1.2.1)
- The Kentucky Biodiesel Production Tax Credit (3.1.2.2)
- The Texas Fuel Ethanol and Biodiesel Production Incentive Programme (3.1.2.3)

3.1.2.1 Iowa Biodiesel Producer Tax Refund

79. The Iowa Producer Tax Refund is provided by Section 423.4(9) of the Iowa Code. In its 2019 version, the Iowa Code provides:

"*9. A person who qualifies as a biodiesel producer as provided in this subsection may apply to the director for a refund of the amount of the sales or use tax imposed and paid upon purchases made by the person.*

a. The person must be engaged in the manufacturing of biodiesel who has registered with the United States environmental protection agency as a manufacturer according to the requirements in 40 C.F.R. §79.4. The biodiesel must be for use in biodiesel blended fuel in conformance with section 214A.2. The person must comply with the requirements of this subsection and rules adopted by the department pursuant to this subsection.

b. The amount of the refund shall be calculated by multiplying a designated rate by the total number of gallons of biodiesel produced by the biodiesel producer in this state during each quarter of a calendar year. The designated rate shall be two cents.

c. A biodiesel producer shall not be eligible to receive a refund under this subsection on more than twenty-five million gallons of biodiesel produced each calendar year by the biodiesel producer at each facility where the biodiesel producer manufactures biodiesel.

d. A person shall obtain a refund by completing forms furnished by the department and filed by the person on a quarterly basis as required by the department. The department shall refund

the amount claimed by the person after subtracting any amount owing from the sales or use taxes imposed and paid upon purchases made by the person.

e. This subsection is repealed on January 1, 2025".

Annex No 33: Section 423.4(9) of the Iowa Code

80. The programme thus provides a refund of USD 0,02 per gallon of biodiesel produced in Iowa. The refund is however limited to the first 25 million gallons produced at each facility.

81. To be eligible, the producer must be a manufacturer of biodiesel, registered by the United States Environmental Protection Agency, the biodiesel must be for use in biodiesel blended fuel and be produced in Iowa.

82. Eligible biodiesel producers need to introduce a refund claim providing data on the number of biodiesel gallons produced during the quarter which is reviewed by Department of Revenue.

83. This subsidy scheme was scheduled to expire on 1 January 2015 but was first extended until 1 January 2018 by the 85th General Assembly of the State of Iowa in 2014[40]. In 2016, the 86th General Assembly of the State of Iowa through an act adopted on 24 May 2016 (Chapter 1106) extended this subsidy scheme for another nine-year period, i.e. until 1 January 2025.

Annex No 35: 2016 Iowa Acts Chapter 1106 extending the Iowa Biodiesel Producer Tax Refund

84. The Iowa Producer Tax Refund 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. The scheme being limited to companies that produce biodiesel and other types of fuel, it is considered to be specific under Article 4(2)(a) of the basic Regulation and therefore countervailable. There is no available evidence which may affect this finding.

3.1.2.2 **Kentucky Biodiesel Production Tax Credit**

85. The Kentucky Biodiesel Production Tax Credit has been created by the 2005 Kentucky Acts, chapter 168, sec. 137, effective 18 March 2005. It has been amended in 2006 and in 2007 and is still in the 2019 version of the Kentucky revised Statutes under sections 141.422 to 141-425.

Annex No 36: Sections 141.422 to 141-425 of the Kentucky Revised Statues as amended in 2006 and 2007

86. This scheme is operated by the Kentucky Department of Revenue which offers a nonrefundable tax credit against the income tax and the limited liability entity tax available to any biodiesel producer physically located in Kentucky.

87. The amount of the tax credit is still equal to US$ 1 per biodiesel gallon produced by a biodiesel producer, US$ 1 per gallon of biodiesel used in the blending process by a biodiesel blender, and US$ 1 per gallon of renewable diesel produced by a renewable diesel producer, unless the

[40] Iowa Acts of the 85th General Assembly (2014), Chapter 1104 approved on 21 May 2014, Section 18, See ***Annex No 34***

total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual cap of US$ 10 000 000.

88. An eligible biodiesel producer shall file a tax credit claim for biodiesel gallons produced or blended (or for renewable diesel produced) in Kentucky by the fifteenth day of the first month following the close of the preceding calendar year. The Kentucky Department of Revenue shall determine the amount of the approved credit based on the amount of biodiesel produced, biodiesel blended, or renewable diesel produced during the preceding calendar year.

89. The Kentucky Biodiesel Production Tax Credit 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 and is limited to companies that produce biodiesel and other types of fuel. It is therefore considered to be specific and countervailable under Article 4(2)(a) of the basic Regulation.

3.1.2.3 **Texas Fuel Ethanol and Biodiesel Production Incentive Programme**

90. The Texas fuel ethanol and biodiesel production incentive programme is governed by Chapter 16 of the Texan Agriculture Code. Under this scheme, the Texas government distributes grants to eligible companies producing ethanol, renewable methane, biodiesel, or renewable diesel in Texas.

Annex No 37: Chapter 16 of the Texan Agriculture Code

91. To be eligible for this grant, producers must be registered before the Texas Economic Development and Tourism Office.

92. Registered Producers that paid a fee of 32 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 1,6 cents for each gallon of biodiesel produced are entitled to receive the grant amounting to 20 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 10 cents for each gallon of biodiesel produced in each registered plant (in the limit of 18 million gallons annually per plant) until the 10th anniversary of the date production from the plant begins[41].

93. Chapter 16 of the Texan Agriculture Code has been amended in 2009[42] and in 2011[43] in particular to reduce the fee imposed to biodiesel producers from 3,2 cents to 1,6 cents per gallon and the amount a biodiesel producer is entitled to receive as a grant for each gallon of biodiesel from 20 cents to 10 cents and to extend the programme to renewable methane producers. Since 2011, there has been no change in Chapter 16 of the Texas Statutes. As of the date of today, this subsidy scheme is therefore still in force and the 2019 version of the Texas Statutes still contains the corresponding provisions in its Chapter 16 entitled "*Fuel Ethanol, Renewable Methane, Biodiesel, And Renewable Diesel Production Incentive Program*".

94. This programme is a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation as the scheme provides a financial contribution by the government of the state of Texas in the form of direct grants which confer a benefit on the companies receiving them in accordance

[41] Chapter 16 of the Texan Agriculture Code, Section 16.006 (b)
[42] Texas Acts 2009, 81st Leg., R.S., Ch. 1295, Sec. 7 and 8, and Texas Acts 2009, 81st Leg., R.S., Ch. 1312, Sec. 9 and 10
[43] Texas Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 2.001

with Article 3(2) of the basic Regulation. This scheme is also limited, *inter alia*, to biodiesel producers, and specific under Article 4(2)(a) of the basic Regulation and thus countervailable.

95. The EU Commission found this scheme countervailable in its original investigation. The subsidy calculated by the Commission amounted to 0,3% applicable to Green Earth Fuels of Houston LLC.

3.2 Analysis of additional potential subsidies

96. In addition to the countervailable subsidies described above, the Applicant has noticed that a number of additional subsidy schemes have been granted to the US biodiesel industry during these past years. These subsidies may potentially be considered as countervailable subsidies within the meaning of the basic Regulation and should therefore be also investigated by the EU Commission.

97. The Applicant provides below a description of new potential countervailable subsidies that it has identified in the US biodiesel sector.

3.2.1 Credit for Production of Cellulosic Biofuel

98. Under the Credit for Production of Cellulosic Biofuel scheme, producers of second generation biofuel used as fuel or sold for use as fuel (including producers of biofuel derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis) can claim a non-refundable general business income tax credit of $1.01 per gallon.

99. The Credit for Production of Cellulosic Biofuel (also called the "*second generation biofuel producer credit*") was established on 1st January 2009, by the Food, Conservation, and Energy Act of 2008[44] and is administered by the Internal Revenue Service. It is codified under Title 26, Section 40 (b)(6) of the US Code.

Annex No 38: Title 26, Section 40 of the US Code

100. This subsidy was supposed to expire on 31 December 2012. However, it was extended several times[45] and, lastly, by the Further Consolidated Appropriations Act of 20 December 2019[46] until 1 January 2021. Indeed, according to Title 26, *Section 40 (b)(6)*(J)(i) of the US Code:

"This paragraph shall apply with respect to qualified second generation biofuel production after December 31, 2008, and before January 1, 2021".

101. During the 2015 expiry review investigation, the EU Commission considered that this scheme did not benefit to US producers of diesel qualified for second generation fuel, "*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*".

102. While the US biodiesel industry is still at the stage of developing the production of cellulosic biodiesel, it is expected that the cellulosic biofuels will constitute a significant part of US

[44] Food, Conservation, and Energy Act of 2008, §15321 (P.L. 110- 246); Amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), §1408; Amended by the Small Business Jobs Act of 2010 (P.L. 111-240), §2121; Amended and extended through the end of 2013 by the American Taxpayer Relief Act of 2012 (P.L. 112-240 §404)

[45] The Credit for Production of Cellulosic Biofuel was extended until January 1, 2014 by Pub. L. 112–240 (2013), until January 1, 2015 by Pub. L. 113–295 (2014), until January 1, 2017 by Pub. L. 114–113 (2015) and until January 1, 2018 by Pub. L. 115–123 (2018). See ***Annexes No 18 to 21***.

[46] Further Consolidated Appropriations Act of 20 December 2019 (Public law 116-94), See ***Annex No 22***.

production in the future. There are therefore currently several projects that aims at developing cellulosic diesel capacities. For example:

- A cellulosic diesel facility in Oklahoma, the Envia Energy biorefinery is a joint venture between Waste Management, Ventech Engineers International LLC, NRG Energy Inc. and Velocys plc. In October 2017, it reached operational capacity of 200 barrels per day;

  Annex No 39: Biodiesel Magazine, Oklahoma cellulosic diesel facility achieves D7 Q-RIN status, 15 March 2018

- In January 2019, Clariant, ExxonMobil and Renewable Energy Group announced their partnership that they have signed a joint research agreement to evaluate the potential use of cellulosic sugars from sources such as agricultural waste and residues to produce biodiesel.

  Annex No 40: BiomassMagazine, ExxonMobil, REG partner with Clariant on cellulosic biodiesel, 23 January 2019

103. The Credit for Production of Cellulosic Biofuel scheme is a subsidy within the meaning of article 3(1)(a)(ii) of the basic Regulation as it provides a financial contribution by the US Government in the form of revenue foregone which is otherwise due (tax offset). The tax credit confers a benefit to the companies receiving them in the sense of article 3(2) of the Basic Regulation. In addition, this subsidy scheme is limited, *inter alia*, to companies that are involved in the biofuel production and eligibility to the programme is limited, *inter alia*, to producers of cellulosic biofuel. Therefore, it must be considered to be specific under Article 4(2)(a) of the basic Regulation and consequently countervailable.

3.2.2 USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Programme

104. The USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Programme (the "biorefinery assistance programme"[47]) is provided under Title 7, Section 8103 (Biorefinery assistance) of the U.S. Code and is administered by the U.S. Department of Agriculture.

Annex No 41: Title 7, Section 8103 of the U.S. Code

105. This programme provides loan guarantees up to $250 million to assist in the development of new and emerging technologies for advanced biofuels (including biodiesel), renewable chemicals, and biobased products. In broad terms, two types of projects are eligible for the programme: biorefineries, and biobased Product Manufacturing facilities. Advanced biofuel is defined as fuel derived from renewable biomass other than corn kernel starch. The project must be located in a US State.

106. Eligible applicants include, but are not limited to, individuals, state or local governments, farm cooperatives, national laboratories, institutions of higher education, and rural electric cooperatives. The total amount of a federal participation (loan guarantee, plus other federal funding) must not exceed 80 percent of the total eligible project costs. The borrower and other principals involved in the project must make a significant cash equity contribution.

Annex No 42: USDA Rural Development - Biorefinery assistance programme - Factsheet

[47] The same programme was called 'Advanced biofuels loan guarantees' in the previous expiry review.

107. This loan programme should be considered as a subsidy in the sense of article 3(1)(a)(i) of the basic Regulation as it provides a financial contribution by the government of USA in the form of a fiscal incentive. This subsidy confers a benefit on the companies receiving them. In addition, this subsidy scheme is specific to companies that are involved in the advanced biofuel industry and is therefore considered to be specific and countervailable under Article 4(2)(a) of the basic Regulation.

3.2.3 Other subsidies

108. In addition to the subsidy schemes described above, the Applicant has identified other subsidies that may have arisen since the 2015 Regulation extending the countervailing duties[48].

109. Given the numerous types of subsidies concerned, and without prejudice to other relevant subsidies that the European Commission could identify during its investigation, the Applicants has provided a list of additional subsidies in *Annex 43* as follows:

- Production tax credit corresponding to a certain amount of dollar per unit (Hawaii Renewable Fuels Production Tax Credit, New York Biofuel Production Tax Credit);

- Production grants, loans, rebates or refunds corresponding to a certain amount of dollar per unit (Minnesota Biofuel Production Grant Programme; Rural Energy for America Programme; Second Generation Biofuel Plant Depreciation Special Allowance);

- Production investment, facility tax credit, tax incentives or exemptions corresponding to a certain amount of biodiesel-related investment costs (Alabama Biofuel Production Jobs Tax Credit, Kentucky Alternative Fuel Production Tax Incentives, Louisiana Provision For Green Jobs Tax Credit, Montana Alternative Fuel And Vehicle Production Property Tax Incentive, North Dakota Biodiesel Production Equipment Tax Credit, South Carolina Biofuels Production Facility Tax Credit, Virginia Green Jobs Tax Credit);

- Investment grants/incentives corresponding to a certain amount of biodiesel-related investment (North Dakota Biofuel Loan Programme, Oregon Alternative Fuel Loans).

Annex No 43: Other US subsidies identified by the Applicant

3.3 Conclusion on subsidization

110. As shown above, the mature US biodiesel industry is still heavily subsidized by the US federal government and the US States.

111. The main subsidy scheme – the Biodiesel Mixture Credit – has been in place for more than 15 years now and will continue to be available to the US biodiesel industry during the next years and beyond. All other federal subsidy schemes which were found countervailable by the Commission in its 2015 expiry review investigation are still in force and have been extended after their initial expiry date. In addition, a significant number of state subsidy schemes are still available to the US biodiesel industry. If some US States subsidy schemes may have expired, other new state subsidies should have been put in place to replace the expired ones.

[48]The Applicant wishes to remind that some state subsidy schemes initially investigated by the EU Commission and found to be countervailable - but against which no duties were imposed because the amount of subsidy found were negligible or because none of the sampled companies received them - may still exist today and have an impact on the level of subsidization granted to US biodiesel producers.

112. There is actually no signal from the US government or the US biodiesel industry indicating that the level of subsidization in the biodiesel sector will be reduced or suppressed in the coming years. In fact, all evidence gathered by the Applicant shows that the US government remains committed to continue to substantially subsidize its US biodiesel industry in the coming years, to allow US biodiesel exporting producers to unfairly compete at the international level. The subsidies available to develop the second-generation biodiesel are also a clear indication that the US government has developed a long-term strategy to support biodiesel, notably through the granting of massive subsidies available to the US biodiesel industry.

113. The US biodiesel industry is boosted by these subsidies and its current size, capacity and production can only be explained as a result of these subsidies. As explained above, such an industry – in its present form – would hardly generate profits without this support mechanism from the US government.

114. Should the countervailing measures be allowed to lapse, it is highly likely that US unfair biodiesel imports would enter again the EU market in significant volumes and at subsidised prices. It is thus of utmost importance to maintain an effective protection against unfair biodiesel imports from the USA.

4. LIKELIHOOD OF RECURRENCE OF INJURY

115. The likelihood of recurrence of injury to the EU biodiesel industry must be analyzed in light of:

- the situation of the EU biodiesel industry; (4.1) and

- a number of indicators pertaining to the US biodiesel industry and the situation of US biodiesel exports which allow to take account of expected future developments in case the countervailing measures would lapse (4.2).

4.1 Overview of the situation of the EU biodiesel industry since the reconduction of the measures

4.1.1 Contextual information

116. The EU market is a very attractive market for biodiesel due to the important demand for diesel in the EU. The EU is indeed the largest biodiesel market worldwide. This attractiveness of the EU biodiesel market has resulted in successive waves of massive unfair imports of biodiesel into the EU since 2009, causing severe injury to the EU biodiesel industry.

117. In addition to unfair biodiesel imports from the USA, the EU biodiesel industry was also hit by massive unfair imports of biodiesel from Argentina and Indonesia. EBB reacted against these unfair biodiesel imports from Argentina and Indonesia by the lodging of anti-dumping

and anti-subsidy complaints on 17 July 2012 and 27 September 2012 respectively[49], which resulted in the imposition of definitive anti-dumping duties on 19 November 2013[50].

118. The anti-dumping measures imposed on biodiesel imports from Argentina and Indonesia were lifted in 2017 and 2018[51] which led to an immediate recurrence of unfair biodiesel imports from these countries on the EU market which cause injury to the EU biodiesel. This forced EBB to initiate anti-subsidy investigations on biodiesel imports from Argentina and Indonesia respectively on 31 January 2018 and on 6 December 2018. Following these investigations, the EU Commission imposed countervailing duties on biodiesel from Argentina on 12 February 2019[52] and on biodiesel imports from Indonesia on 9 December 2019[53].

119. The above contextual information shall be taken into account to allow an objective assessment of the injury indicators presented in the next sections.

4.1.2 Evolution of the main injury indicators

120. The evolution of the situation of the EU biodiesel industry is reflected in the data below.

Annex No 44: Company individual data

121. As already mentioned above, the Applicant represented in 2019 31% of the total EU biodiesel industry. The Applicant is therefore sufficiently representative for an assessment of the micro-indicators.

122. Regarding data that can be used to illustrate the situation of the EU biodiesel industry as a whole (macro-indicators), EBB, as the most trusted source for statistics, has provided reliable data that may be verified accordingly by the EU Commission.

4.1.2.1 Volume of imports

123. As shown in the table below, the volume of biodiesel imports in the EU increased between 2015 and 2019 from 544 631 tonnes in 2016 to almost 3,2 million tonnes in 2019, as a result of a significant surge of biodiesel imports from Argentina, Indonesia, Malaysia and China:

[49] See Notice of initiation of an anti-dumping proceeding concerning imports of biodiesel originating in Argentina and Indonesia (2012/C 260/04), OJ C 260/8, 29 August 2012; and Notice of initiation of an anti-subsidy proceeding concerning imports of biodiesel originating in Argentina and Indonesia (2012/C 342/03), OJ C 342/12, 10 November 2012

[50] 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, L 315/2, 26 November 2013; See also Commission Regulation (EU) No 1198/2013 of 25 November 2013 terminating the anti-subsidy proceeding concerning imports of biodiesel originating in Argentina and Indonesia and repealing Regulation (EU) No 330/2013 making such imports subject to registration, 26 November 2013

[51] These anti-dumping duties were annulled as a result of actions brought by Argentina and Indonesia before the WTO and actions brought by the Argentinean and Indonesian exporters before the EU Courts.

[52] Commission implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina, OJ L 40/1, 12 February 2019

[53] Commission implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia, OJ L 317/42, 9 December 2019

Countries	2016	2017	2018	2019
USA	0	0	2 302	1
ARGENTINA	0	355 785	1 647 537	890 038
INDONESIA	31 117	24 984	785 046	810 737
MALAYSIA	285 427	386 561	434 841	742 776
CHINA	38 478	208 546	249 997	523 236
NORWAY	35 275	74 325	53 428	56 122
OTHERS	154 335	115 675	147 755	155 724
TOTAL	**544 631**	**1 165 875**	**3 318 603**	**3 178 632**

Source: Eurostat (Main customs code for biodiesel: CN code 3826 00 10)

Annex No 45: Import statistics

124. The volume of US biodiesel imports has, for its part, been negligible since 2016.

4.1.2.2 **Macro data**

(i) Production, capacity and utilization rate

125. As shown in the table below, the production of the EU biodiesel industry gradually increased by 18% between 2016 and 2019, from 1 958 862 tonnes in 2016 to 14 139 451 tonnes in 2019

	2016	2017	2018	2019
Production of the EU industry (in tonnes)	11 958 862	13 071 053	13 467 258	14 139 451
Index (2016=100)	*100*	*109*	*113*	*118*
Capacity of the EU industry (in tonnes)	16 561 814	16 594 853	17 155 473	17 295 032
Index (2016=100)	*100*	*100*	*104*	*104*
Capacity utilization (%)	72%	79%	79%	82%
Index (2016=100)	*100*	*109*	*109*	*113*

Source: macro data (Annex 5)

126. The capacity of the EU biodiesel industry also increased between 2016 and 2019 from 16 651 814 tonnes in 2016 to 17 295 032 tonnes in 2019, i.e. a 4% increase

127. As a result of an increase of the EU biodiesel production – at a higher rate than that of the capacity, the utilization rate increased by 13% during the period considered.

(ii) EU consumption, EU sales and market shares of the EU industry

128. The consumption was established by adding EU sales to imports of biodiesel from all sources to the EU. As shown in the table below, the EU consumption increased by 43% over the period concerned:

	2016	2017	2018	2019
Total EU sales (in tonnes)	10 920 665	13 004 462	13 130 831	13 205 353
Index (2016=100)	*100*	*119*	*120*	*121*
Total imports from non-EU countries (in tonnes) (Eurostat)	512 902	1 195 906	3 318 603	3 178 632
Index (2016=100)	*100*	*233*	*647*	*620*
Actual EU consumption (in tonnes)	**11 433 567**	**14 200 368**	**16 449 554**	**16 384 106**
Index (2016=100)	*100*	*124*	*144*	*143*

Source: macro data (Annex 5)

129. The EU industry's sales increased by 21% between 2016 and 2019.

130. However, as a result of the flood of unfair biodiesel imports from Argentina at the very end of Q4 2017 and from Indonesia as from Q2 2018, the EU industry lost market shares during the period concerned, from 96% in 2016 to 81% in 2019:

Market shares	2016	2017	2018	2019
Total EU sales (in tonnes)	10 920 665	13 004 462	13 130 831	13 205 353
Index (2016=100)	*100*	*119*	*120*	*121*
Actual EU consumption (in tonnes)	11 433 567	14 200 368	16 449 554	16 384 106
Index (2016=100)	*100*	*124*	*144*	*143*
Market shares of the EU industry (in tonnes)	**95,5%**	**91,6%**	**79,8%**	**80,6%**
Index (2016=100)	*100*	*96*	*84*	*84*

Source: macro data (Annex 5)

4.1.2.3 **Micro data**

131. To assess the situation of the Applicants, the following indicators will be examined:

- Production, production capacity and capacity utilization of the Applicant;
- Market shares;
- Sales volumes and sales prices;
- Exports;
- Costs of production;
- Profitability;
- Employment;
- Stocks;
- Investments.

132. As shown in the summary table below, if the situation of the Applicant globally improved between 2016 and 2019, it was nevertheless prevented to reach better performance as a result of the flood of unfair biodiesel imports from Argentina and Indonesia:

Performances of the Applicant				
	2016	2017	2018	2019
Production (in tonnes)	4 021 447	4 323 162	4 368 403	4 363 070
Index (2016=100)	*100*	*108*	*109*	*108*
Capacity (in tonnes)	5 211 790	5 257 154	5 375 065	5 446 486
Index (2016=100)	*100*	*101*	*103*	*105*
Capacity utilization (%)	77%	82%	81%	80%
Index (2016=100)	*100*	*107*	*105*	*104*
Market shares (in tonnes)	33%	30%	26%	26%
Index (2016=100)	*100*	*89*	*77*	*77*
Sales in the EU (in tonnes)	3 820 458	4 200 729	4 236 439	4 208 337
Index (2016=100)	*100*	*110*	*111*	*110*
Average unit sales price (€/tonne)	788	849	843	812
Index (2016=100)	*100*	*108*	*107*	*103*
Unit cost of production (€/tonne)	784	869	800	795
Index (2016=100)	*100*	*111*	*102*	*101*
Profitability (%)	2,03%	1,51%	3,62%	3,94%
Index (2016=100)	*100*	*74*	*178*	*194*
Employment (number of employees)	995	1 021	1 088	1 157
Index (2016=100)	*100*	*103*	*109*	*116*
Closing stocks (tonnes)	161 919	169 360	214 854	208 381

Index (2016=100)	*100*	*105*	*133*	*129*
Investment (€)	16 274 019	48 469 895	29 405 520	44 053 419
Index (2016=100)	*100*	*298*	*181*	*271*

Source: Company individual data (Annex 44)

133. As shown in the table above:

- The **production** of the Applicant increased by 8% between 2016 and 2017 from 4,02 million tonnes to 4,32 million tonnes. In 2018 and 2019, the production of the Applicant remained relatively stable amounting to a volume of 4,36 million tonnes. The **production capacity** increased gradually during the period considered from 5,21 million tonnes in 2016 to 5,45 million tonnes in 2019, i.e. an increase of 5%. The **capacity utilization** increased between 2016 and 2017 by 7% to reach 82% and then slightly decreased in 2018 and 2019 to 81% and 80% respectively.

- The **EU sales** of the Applicant followed the same trend than production. Thus, the EU sales of the Applicant increased by 10% between 2016 and 2017 from 3,8 million tonnes to 4,2 million tonnes. In 2018 and 2019, the EU sales of the Applicant remained stable.

  The slowdown of the positive performances of the Applicant in terms of production and sales as from 2018 can be explained by the surge of unfair imports of biodiesel first from Argentina as from September 2017, and then from Indonesia as from March 2018. As explained above, the removal of the anti-dumping duties imposed on biodiesel imports from Argentina[54] and Indonesia[55] led to an immediate recurrence of unfair biodiesel imports from these countries which jeopardized the good performances of the Applicant. Thus, while the EU consumption increased by 16% between 2017 and 2018, this increase did not benefit to the Applicant whose EU sales remained relatively stable. In the same vein, the **market shares** of the Applicant decreased during the period considered, from 33% in 2016 to 26% in 2019 as a result of the surge of unfair imports from Argentina and Indonesia.

- While the **unit sales price** of the Applicant increased between 2017 and 2018, from 788 €/tonne to 849 €/tonne, it then decreased in 2018 to 843 €/tonne and 812 €/tonne. This decrease in the EU sales price of the Applicant as from 2018 can also be explained by the pressure exercised by unfair imports from Argentina and Indonesia. Absent this

[54] For Argentina, the WTO DSB adopted on 26 October 2016 the panel report as modified by the Appellate Body report in the EU – Anti-dumping measures on biodiesel from Argentina dispute (DS 473). Accordingly, the EU Commission initiated on 20 December 2016 a review to bring the anti-dumping measures imposed on imports of biodiesel from Argentina into conformity with the WTO recommendations and rulings contained in the Reports. On 19 September 2017, the EU Commission decreased the anti-dumping duties imposed on biodiesel imports from Argentina, at levels between 4,5% and 8,1%. In this review, the EU Commission took the decision to continue its analysis with respect Indonesia without modifying at that time the level of the duties applicable on biodiesel imports from Indonesia.

[55] See Case T-80/14: Judgment of the General Court of 15 September 2016, PT Musim Mas v. Council, OJ C 402, 31.10.2016, p. 28–29; Case T-120/14: Judgment of the General Court of 15 September 2016, PT Ciliandra Perkasa v Council, OJ C 402, 31.10.2016, p. 32–33; Case T-121/14: Judgment of the General Court of 15 September 2016, PT Pelita Agung Agrindustri v Council of the European Union, unpublished; Case T-139/14: Judgment of the General Court of 15 September 2016, PT Wilmar Bioenergi Indonesia and PT Wilmar Nabati Indonesia v Council, OJ C 402, 31.10.2016, p. 33. While the Council initially appealed these judgments, it then finally decided to withdraw its appeals on 2 and 5 March 2018 (see orders of the President of the Court of Justice of 15 February 2018 in Joined Cases C-602/16 P and C-607/16 P to C-609/16 P, and of 16 February 2018 in cases C-603/16 P to C-606/16 P. Consequently, the judgments became definitive and binding as from the date of their delivery.

pressure, the Applicant would have been able to maintain its sales prices to reach better profit margins.

– While the **unit cost of production** of the Applicant significantly increased between 2016 and 2017 - from 784 €/tonne to 869 €/tonne (which thus affected the profitability of the Applicant that decreased from 2% to 1,5% during the same period) - it then significantly decreased to an amount of 800 €/tonne and 795 €/tonne in 2018 and 2019. This decrease of the unit cost of production allowed the Applicant to increase profit margins in 2018 and 2019 despite the flood of unfair imports from Argentina. Thus, in 2018 and 2019, the Applicant reached profits margins amounting to 3,6% and 3,9% respectively. The EU Commission's decision to make biodiesel imports from Argentina subject to registration as from 25 May 2018[56] also contributed to mitigate the flood of unfair imports from Argentina and the resulting injury caused to the EU biodiesel industry.

– The **closing stocks** of the Applicant increased by 33% between 2016 and 2018, from 161 919 tonnes to 214 854 tonnes, and then slightly decreased in 2019 to reach 208 381 tonnes.

– Despite the flood of unfair imports from Argentina and Indonesia, the Applicant has been able to gradually increased **employment** during the period considered. Thus, the employment of the Applicant increased from 995 employees in 2016 to 1021 employees in 2017. In 2019, employment of the Applicant reached 1157 employees, i.e. an increase of 16% between 2016 and 2019.

– In the same vein, the Applicant also increased **investments** during the period considered. Thus, investment increased from 16,27 million € in 2016 to 48,47 million € in 2018. While the investment of the Applicant decreased in 2018 to 29,4 million €, it then increased again to 44,05 million € in 2019.

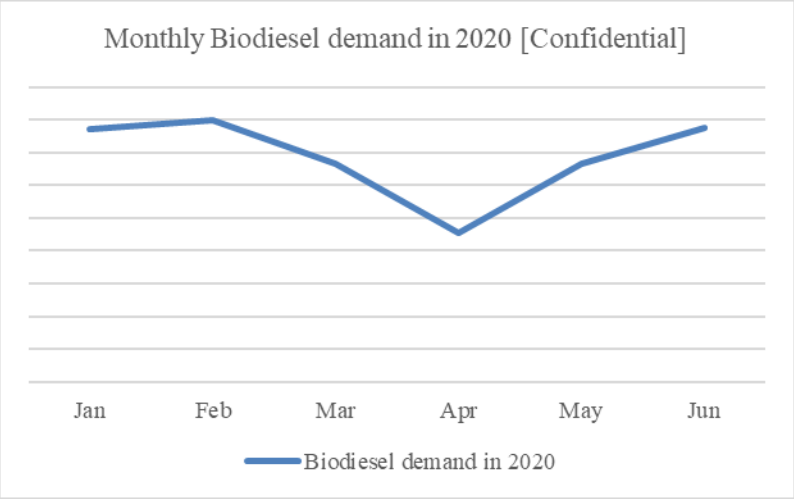
4.1.3 Market disturbance due to the COVID-19 crisis

134. The COVID-19 pandemic has significantly reduced the demand for biodiesel in March, April and May 2020. Indeed, the EU demand for diesel, and the corresponding demand for biodiesel blend, has dropped abruptly and prices in the European biodiesel market have sharply decreased.

135. As shown in the chart below, the biodiesel demand decreased by -17% in March and decreased again by -32% in April. The EU demand started to recover in May 2020 and finally reached, in June 2020, a level higher than in January 2020:

[Confidential: Information pertaining to the monthly biodiesel demand in the EU in 2020 (chart). The source is protected by copyrights and the information is only accessed upon fee subscription. The disclosure of this information would have a significantly adverse effect upon the person supplying the information. As a non-confidential summary, the following chart is disclosed]

[56] Commission Implementing Regulation (EU) 2018/756 of 23 May 2018 making imports of biodiesel originating in Argentina subject to registration, OJ L 128, 24.5.2018, p. 9



136. This decrease in the EU biodiesel demand in March and April had an impact on the EU biodiesel price. As shown in the chart below, the EU FAME0 FOB ARA T2 price which reached [*Confidential: 850 – 900*] USD/MT at the end of January 2020 decreased abruptly at the end of March 2020 and remained at very low level in April and early May reaching a record low level of [*Confidential: 500 – 650*] USD/MT. Price recovery took place in the course of May and in June.

[Confidential: Information pertaining to the biodiesel price (Fame 0 FOB ARA T2) in the EU in 2020 (chart). The source is protected by copyrights and the information is only accessed upon fee subscription. The disclosure of this information would have a significantly adverse effect upon the person supplying the information. As a non-confidential summary, ranges have been disclosed in the paragraph above]

4.1.4 Interim conclusion on the situation of the Union industry

137. The data reported above show that the Applicant is able to reach very good economic performances in the absence of unfair practices on the EU market from third-country exporters.

138. The last flood of unfair biodiesel imports from Argentina and Indonesia has once again mitigated the good performances of the Applicant.

139. Should the countervailing measures on biodiesel imports from the USA were allowed to lapse, it is highly likely that the EU biodiesel industry would be hit again by unfair biodiesel imports from the USA causing severe injury to the EU biodiesel industry and jeopardizing its efforts made to recover from past unfair practices.

4.2 Likelihood of recurrence of injury should the measures be removed

140. The Applicant is more than convinced that should the measures be allowed to lapse, subsidized imports of biodiesel from the USA would recur on the EU market and would cause adverse effect on the EU biodiesel industry. As demonstrated below:

- The subsidies granted to the US biodiesel industry continue to impact the US export price of biodiesel which is likely to decrease in the coming years; (**4.2.1**)

- A comparison between the EU sale prices of biodiesel and US export prices to the EU shows significant undercutting margin; (**4.2.2**)

– US biodiesel production and capacity have continued to strongly increase since the reconduction of the countervailing measures in 2015 and are expected to further increase in the near future; (**4.2.3**)

– The EU market is very attractive for US biodiesel producers. (**4.2.3**)

4.2.1 The subsidies continue to impact the US export price for biodiesel

141. An analysis of the development of the US biodiesel export prices to third countries shows that the $1/gallon subsidy granted to the US biodiesel industry has a clear and direct effect on US biodiesel export prices.

142. As a general trend, when the $1/gallon subsidy is in place, US export prices decrease. Conversely, when the $1/gallon subsidy is temporarily removed, US export prices tend to increase.

143. The table below shows the US export price of biodiesel to Canada (i.e. the first export destination of US biodiesel) during 2016 (i.e. when the $1/gallon subsidy was in place and when the US biodiesel industry knew at the beginning of the year that the $1/gallon subsidy will apply for the whole year) and in 2017 (i.e. when the $1/gallon subsidy has expired and when the US biodiesel industry was uncertain about the retroactive reinstatement of the subsidies[57]). As demonstrated in this table, following the expiration of the $1/gallon subsidy on 31 December 2016, the US export price to Canada significantly increased in 2017, from $907 per MT to $1 355 per MT in (i.e. an increase of 49%):

US export price of biodiesel to Canada (USD / tonne)			
Month	**2016**	**2017**	**Evolution**
January	1112	1 258	+13%
February	1265	1 899	+50%
March	885	1 126	+27%
April	749	1 308	+75%
May	771	1 297	+68%
June	856	1 304	+52%
July	913	1 314	+44%
August	918	1 335	+45%
September	1070	1 511	+41%
October	1375	1 600	+16%
November	1131	1 914	+69%
December	1273	2 095	+65%
Total	**907**	**1 355**	**+49%**

Source: USDA – Foreign Agricultural service

See Annex No 46: US export price of biodiesel to Canada (2016-2017)

144. In December 2019, following strong lobbying actions from the US biodiesel industry, the US Government retroactively reinstated the $1/gallon subsidy, from 1 January 2018 until at least 31 December 2022. This 5-year extension is the longest extension provided since the implementation of this subsidy. The predictability offered by this long extension of the $1/gallon subsidy until at least end of 2022 would encourage the US biodiesel industry to take

[57] For 2017, the biodiesel tax credit was retroactively reinstated by the Bipartisan Budget Act of 9 February 2018.

full advantage of the subsidy and thus decrease US biodiesel export prices to reach levels that would not have been economically viable in the absence of subsidization.

4.2.2 A comparison between the EU sale prices of biodiesel and US export prices to the EU shows significant undercutting margin

145. A comparison of prices practiced by the EU biodiesel producers and US import prices to the EU in 2019 shows significant undercutting margin.

146. The Applicant calculated the price undercutting by comparing the average sale price of biodiesel of the Applicant in 2019 with the US biodiesel export price to the EU adjusted to obtain a CIF price after customs clearance in the EU:

Price undercutting	**2019**
Average Sales Price of the Applicant (in €/tonne)	812,16
US biodiesel export price to the EU (CIF price after customs clearance in the EU) (in €/tonne)	485,87
Undercutting (in €/tonne)	326,29
% of undercutting	**40,2%**

Annex No 47: Undercutting calculation

147. The above calculation reveals a significant undercutting margin of 40,2% which confirms that US export sale prices would severely undercut EU sale prices of biodiesel, should the measures be removed.

4.2.3 US biodiesel production and capacity have continued to strongly increase since 2015 and are expected to increase further in the near future

148. The US biodiesel industry has continued to grow since the reconduction of the countervailing measures in September 2015. According to the U.S. Energy Information Administration, the production of the US biodiesel industry has increased from 4,21 million tonnes in 2015 to 5,75 million tonnes in 2019, i.e. an increase of 36%:

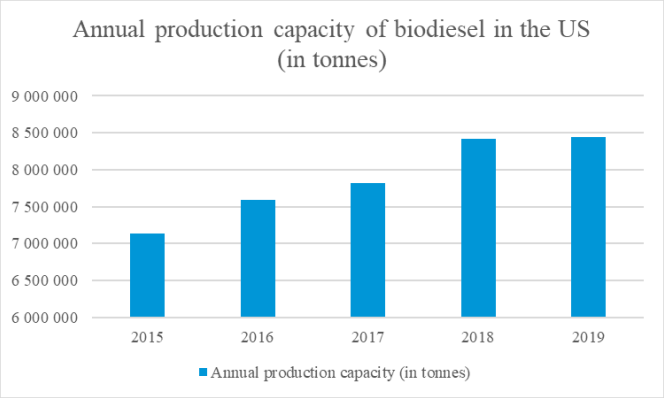
In tonnes	**2015**	**2016**	**2017**	**2018**	**2019**
US biodiesel production	4 209 802	5 224 046	5 317 255	6 189 025	5 745 653
Index (2015 = 100)	*100*	*124*	*126*	*147*	*136*

Source: U.S. Energy Information Administration, Monthly Biodiesel Production Report (Annex 50)

149. In the same vein, the US annual production capacity has grown each year since 2015. In 2019, it amounted to 8 440 809 tonnes i.e. a 18% increase (+1,3 million tonnes) compared to 2015:

In tonnes	**2015**	**2016**	**2017**	**2018**	**2019**
US biodiesel capacity	7 139 297	7 584 704	7 818 516	8 413 596	8 440 809
Index (2015 = 100)	*100*	*106*	*110*	*118*	*118*

Source: U.S. Energy Information Administration, Monthly Biodiesel Production Report (Annex 50)



Annex No 48: EIA Overview of the US biodiesel industry and market

150. The Applicant also understand that 12 biodiesel factories are currently under construction. As shown in the table below, these investments would amount to an additional capacity of almost 4,5 million tonnes per year:

Name	State	City	Capacity in tonnes
Crimson Renewable Energy LP	CA	Bakersfield	108 048
Diamond Green Diesel (Renewable Diesel)	LA	Norco	2 025 892
Genuine Bio-Fuel of New Jersey	NJ	Lincoln Park	16 507
Hero BX Illinois	IL	South Roxana	60 026
Marathon Petroleum Dickinson Refinery (Renewable Diesel)	ND	Dickinson	552 243
New Leaf Biofuel LLC	CA	San Diego	36 016
Ryze Renewables Las Vegas (Renewable Diesel)	NV	Las Vegas	300 132
Ryze Renewables Reno (Renewable Diesel)	NV	Sparks	150 066
SME Dublin LLC	GA	East Dublin	22 510
Tara Industries LLC	MO	Tina	180 079
World Energy Estill	SC	Estill	120 053
World Energy Paramount at AltAir Paramount LLC (Renewable Diesel)	CA	Paramount	900 396
Total Plants: 12			**4 471 968**

Source: Biodiesel Magazine

Annex No 49: Biodiesel Magazine - US biodiesel plants under construction

151. The retroactive reinstatement of the $1/gallon subsidy in December 2019 for a five-year period will certainly encourage the US biodiesel industry to further increase capacity in the near future.

152. In view of the above, a surge of biodiesel imports from the USA into the EU is undoubtedly expected in the absence of continuation of the currently applicable countervailing duties, which would cause a severe injury to the EU domestic industry.

4.2.4 Attractiveness of the EU market

153. The EU biodiesel market is the world's biggest consumer of biodiesel. This can be explained by the EU's prominent status as a user of diesel and by the strong mandates for greenhouse gases reductions imposed by the EU's Renewable Energy Directive.

154. The OECD-FAO Agricultural Outlook 2019-2028 confirmed that the EU should still be the first user of biodiesel worldwide in 2028 with 33% of world total biodiesel use, far ahead of the US which should remain the second largest market in the world accounting for 22% of the worldwide biodiesel use.

Annex No 50: OECD-FAO Agricultural Outlook 2019-2028 (Table C.41.1, p. 80)

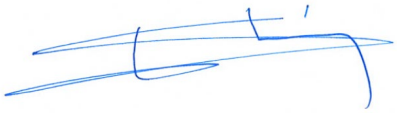
155. As the largest biodiesel market worldwide, the EU is a major target for US biodiesel producers to use their spare capacities and clear their available stocks in order to reduce their unit cost of production. The US biodiesel producers' potential to penetrate the EU market is currently only constrained by the anti-dumping and countervailing duties in force.

5. CONCLUSION

156. The Applicant has established that there is *prima facie* evidence of likelihood of recurrence of injurious subsidization should the countervailing measures on biodiesel imports from the USA be allowed to expire.

157. In view of the above, the Applicant requests the EU Commission to initiate an expiry review investigation and to reconduct the countervailing measures for another five-year period.

Done in Brussels on 15 July 2020,



Marie-Sophie Dibling

Partner

Request for an expiry review of the countervailing duties applicable to imports of biodiesel originating in the United States of America

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List of annexes

OPEN VERSION

Annex No 1: Power of Attorney

Annex No 2: EBB Statutes

Annex No 3: List of EBB members and associates – OPEN VERSION

Annex No 4: Extracts from the minutes of the EBB's Executive Board meeting – OPEN VERSION

Annex No 5: Macro data including production (Source: EBB) – OPEN VERSION

Annex No 6: List of Applicants – OPEN VERSION

Annex No 7: List of EU biodiesel producers supporting the expiry review request and mails of support – OPEN VERSION

Annex No 8: Confidentiality requests – OPEN VERSION

Annex No 9: List of known EU producers which are not EBB members – OPEN VERSION

Annex No 10: List of biodiesel producers in the USA

Annex No 11: List of known trading companies involved with the import of biodiesel into the EU – OPEN VERSION

Annex No 12: List of main known importers and users of the product concerned in the EU – OPEN VERSION

Annex No 13: Title 26, Section 40A of the US code

Annex No 14: Extract of the American Jobs Creation Act of 2004 (P.L. 108-357), Sec. 302

Annex No 15: Extract of the Energy Policy Act of 2005 (P.L. 109-58), Sec. 1344

Annex No 16: Extract of the Energy Improvement and Extension Act 2008 (P.L. 110-343), Division B

Annex No 17: Extract of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 17 December 2010 (P.L. 111-312), Sec. 701

Annex No 18: Extract of the American Taxpayer Relief Act of 2 January 2013 (P.L. 112-240), Sec. 405

Annex No 19: Extract of the Tax Increase Prevention Act of 19 December 2014 (P.L. 113-295), Division A, Sec 153

Annex No 20: Extract of the Consolidated Appropriations Act of 18 December 2015 (P.L.114–113), Sec. 185

Annex No 21: Extract of the Bipartisan Budget Act of 9 February 2018 (P.L. 115–123), Sec. 40407

Annex No 22: Extract of the Further Consolidated Appropriations Act of 20 December 2019 (P.L. 116-94), Division Q, Sec. 121

Annex No 23: Press release, Biodiesel Magazine, "Historic 5-year extension of biodiesel tax credit signed into law", 20 December 19

Annex No 24: Report from ABF Economics, the importance of the Biodiesel Tax Credit, 24 July 2019

Annex No 25: ICIS, US biodiesel production likely to continue declining on lapsed tax credit, 21 November 2019

Annex No 26: Report of Taxpayers for Common Sense, April 2019

Annex No 27: Title 7, Section 8105 of the US code

Annex No 28: US Code of Federal Regulations, Title 7, Part 4288.102

Annex No 29: Extract of the USDA Rural Development website, Advanced Biofuel Payment Program

Annex No 30: Extract of the Agricultural Act of 7 February 2014 (P.L. 113–79), Sec. 9005

Annex No 31: Extract of the Agriculture Improvement Act of 2018 (Public law 115–334), Sec. 9005

Annex No 32: Press release, Biodiesel Magazine, "USDA seeks applications for advanced biofuel payment program", 24 December 2019

Annex No 33: Section 423.4(9) of the Iowa Code

Annex No 34: 2014 Iowa Acts, Chapter 1104 extending the Iowa Biodiesel Producer Tax Refund

Annex No 35: 2016 Iowa Acts Chapter 1106 extending the Iowa Biodiesel Producer Tax Refund

Annex No 36: Sections 141.422 to 141-425 of the Kentucky Revised Statues as amended in 2006 and 2007

Annex No 37: Chapter 16 of the Texan Agriculture Code

Annex No 38: Title 26, Section 40 of the US Code

Annex No 39: Press release, Biodiesel Magazine, "Oklahoma cellulosic diesel facility achieves D7 Q-RIN status", 15 March 2018

Annex No 40: Press release, BiomassMagazine, "ExxonMobil, REG partner with Clariant on cellulosic biodiesel", 23 January 2019

Annex No 41: Title 7, Section 8103 of the US Code

Annex No 42: USDA Rural Development Factsheet on the Biorefinery assistance programme

Annex No 43: Other US subsidies identified by the Applicant (Summary and documents)

Annex No 44: Company individual data – OPEN VERSION

Annex No 45: Eurostat import data

Annex No 46: US export price of biodiesel to Canada (2016-2017)

Annex No 47: Undercutting calculation and evidence of international transport costs – OPEN VERSION

Annex No 48: EIA Overview of the US biodiesel industry and market

Annex No 49: List of US biodiesel plants under construction (data and table)

Annex No 50: OECD-FAO Agricultural Outlook 2019-2028

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