

E.U. Slaps U.S. Biodiesel With Duties Retroactive to August, 2010

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Press Release -- May 9, 2011 -- EBB welcomes the recent announcement¹ confirming the adoption by EU Member States of Regulations preventing the circumvention of the anti-dumping and countervailing duties on US biodiesel in place since 2009.

This decision successfully concludes an investigation by European Commission services prompted by an EBB complaint last June and was backed up by Member States last week.

Since early 2007, the profitability of EU biodiesel producers had been severely affected by heavily subsidized and dumped biodiesel from the US (known as "B99"). In March 2009, following an EBB legal action, EU trade authorities imposed extensive anti-dumping and countervailing measures on imports of US biodiesel. These measures are in place for five years. The EU duties partly contributed to reestablishing more favorable market conditions for EU biodiesel producers. Nevertheless, the EU biodiesel industry continued being injured by cheap biodiesel imports from the US, circumventing the anti-dumping and countervailing measures in place.

Soon after March 2009, new patterns in the transatlantic biodiesel trade emerged, as follows:

- The trans-shipment of US biodiesel in third countries (in particular Canada) to conceal its US origin;
- The export of artificially designed blends containing less than 20% biodiesel and not covered by the EU measures adopted in 2009 (typically B19, B7, etc).

Following an EBB complaint, the Commission opened an investigation in August 2010, which demonstrated that the remedial effects of the duties in place since March 2009 had been affected both in terms of quantity and prices by B19 and lower blends imports, as well as by imports of US biodiesel trans-shipped in Canada. The Commission investigation also did not bring to light any due cause or economic justification to these practices, except avoiding the payment of the existing EU anti-dumping and countervailing duties.

The anti-circumvention measures adopted by the Council are:

- retroactively extending to August 13th 2010 the definitive anti-dumping and countervailing duties to imports of biodiesel consigned from Canada. In this case, the maximum combined anti-dumping and countervailing duty calculated during the main investigation will apply (€409,2/ton).
- retroactively extending to August 13th 2010 the definitive anti-dumping and countervailing duties to all imports of US biodiesel blends below the 20% threshold (B19, B7...). For US companies already investigated in 2009, the combined per-company duties will apply (ranging from €213,8/ton to €409,2/ton) while other US companies will be subjected to the highest combined duty (€409,2/ton), in proportion to the biodiesel content in the blend.

Separately, the Regulations adopted by the Council last week terminate the investigation into circumvention via Singapore, also initiated in August 2010, given that the majority of biodiesel exports to the EU were found to be of limited volume and of genuine Singaporean origin.

Since the adoption of the definitive anti-dumping and countervailing duties on US biodiesel in March 2009, EBB has been actively tracking all circumvention attempts and new trade patterns affecting their efficiency. It is therefore with great satisfaction that EBB sees its claims confirmed and its efforts

recognized by the recent Council decision.

EBB is aware that new trans-shipment destinations for US biodiesel have surfaced recently. EBB is systematically investigating these new trade patterns and stands ready to address them in due course with Commission services.

In parallel, the European biodiesel industry has been working with the EU Anti-Fraud Office (OLAF) to address fraudulent US biodiesel imports into the EU. In case of established fraudulent practices, unpaid duties can be collected by EU authorities up to three years back, which would also entail heavy financial penalties.

"The anti-circumvention measures adopted by the Council represent a decisive move to ensure that the remedial effect of the EU duties on US biodiesel is fully maintained over time. Operators should be aware that any future attempt to circumvent the existing duties can be investigated and remedied in the same way, with retroactive financial implications for the companies involved" said EBB Secretary General Raffaello Garofalo.

Background:

Since late 2006, the European market had been severely affected by imports of highly subsidized and dumped biodiesel from the United States of America. US biodiesel "B99" blends have been sold in the European market as "pure biodiesel" and at a substantial discount (over €120-180/tonne), in some cases at a lower price than the raw materials purchased by the EU industry for producing biodiesel. This has created a price-setting competition, progressively disrupting the margins of European biodiesel producers.

In March 2009, following a complaint lodged by the European Biodiesel Board (EBB) and an investigation conducted by the European Commission services, robust anti-dumping and countervailing duties were imposed on imports of biodiesel from the US. Despite the undeniable positive effects of the EU duties, circumvention practices have started emerging soon after March 2009, which prompted EBB to lodge an anti-circumvention complaint in June 2010.

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