

Europe claims US is guilty of biodiesel customs evasion

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Italian judicial authorities confirmed the seizure of a large quantity of biodiesel illegally imported in Venice on March 31. On April 20, the provisional seizure of the cargo was extended as a definitive one by an Italian judge, according to the European Biodiesel Board. The EBB welcomed the decision, stating that the measure "legally confirms the fraudulent nature of a number of existing illegal traffics of biodiesel, directly or indirectly imported from the U.S."

The official customs inquiry is set to be conducted throughout the EU, and will include the review of past imports of biodiesel, paving the way for definitive penal sentences, the EBB stated.

On March 31, Italian customs authorities seized a large quantity of biodiesel in the port of Venice out of an import of 10,000 metric tons (about 3 million gallons) of biodiesel entered in the ports of Venice and Trieste. The product was declared as Canadian origin, but the EBB stated that "strong evidences" indicate that the shipment instead originated from the U.S., where it benefited from the \$1 per gallon federal blender tax credit.

On April 21, the Venice daily newspaper La Nuova di Venezia reported that witnesses came from Canada in order to provide evidence that the 10,000 tons of biodiesel confiscated was manufactured and purchased in Canada, not in the U.S. as the European authorities and the EBB are claiming.

According to La Nuova di Venezia, the shipment was intended to be received by Bussinello Prodotti Petroliferi (Bussinello Oil Products). After the seizure Bussinello's attorneys appealed the move by trying to prove the ship was loaded between Feb. 20 and Feb. 23 in the Canadian port of Quebec by using testimonies from the cargo inspector who performed the operation in Canada, and a Canadian photographer who took photos of the vessel while in the Quebec port. But according to the charge held by public prosecutor Federico Bressan, the satellite track indicated that the vessel touched more than a call in the U.S., but not the Canadian stop indicated in the documentation accompanying the shipment.

The Venice-based newspaper goes on to say that on April 20, lawyers brought records of the Canadian witnesses in front of the Court, along with the photo taken in the port of Quebec and the customs documentation. This however was not enough for the Court of Venice chaired by Giovanni Maria Pietrogrande, which rejected the appeal forwarded by lawyers of Andrea Bussinello, investigated for customs evasion.

The confiscated biodiesel was namely offered with a \$150 to \$180/ton (a 50-cent to 60-cent per gallon) discount compared to EU biodiesel of comparable quality, and at a lower price than the most common biodiesel raw materials such as soybean and rapeseed oils.

"A number of material evidences converge to indicate that the cargo is part of wider trans-shipment traffic aimed at evading existing EU antidumping and anti-subsidy measures on U.S. biodiesel," the EBB stated. Customs duties can be claimed back and collected with a retroactive effect of 3 years and, if infractions are established, are then to be paid within a few days.

When Biodiesel Magazine asked the EBB to reveal the evidence on which these claims of customs evasion are being based, project manager Amandine Lacourt said, "As we indicate in the release, one of the main indications is that the product was offered with a substantial discount. Obviously, you cannot achieve this via better performing industry practice, but only thanks to the subsidy available in the U.S., which for B99.9 amounts to no less than \$300 a ton."

While it is entirely possible that U.S. biodiesel subsidized with the now-expired federal blender credit stayed in the distribution chain from late December when the U.S. credit expired to late March, when the shipment was seized, the EBB made no public acknowledgement of the tax credit situation in the U.S. in its press releases on this issue of fraudulent imports. When Biodiesel Magazine asked Lacourt

about this, she said, "On Dec. 9, the U.S. House already extended the credit until the end of 2010. Now the Senate has to adopt a similar measure but many players are already betting on a retroactive extension of the tax credit back to Jan. 1, 2010." While this is true, the retroactive nature of the credit—assuming the House and Senate versions are reconciled and it becomes law with such a provision—will only apply to biodiesel that has been sold and blended into the marketplace, and will not account for the tremendous amount of lost business that would have taken place if the credit were still in effect.

"Market players need to be aware that fraudulent practices will not remain unpunished and that EBB will do its utmost in assisting EU and national authorities to track and oppose these practices," said EBB president Bernard Nicol. "Retroactive financial penalties as well as penal terms will be involved." In July 2009, following a complaint lodged by the EBB and an investigation conducted by the European Commission services, robust anti-dumping and countervailing duties were imposed on imports of biodiesel from the U.S. The EBB stated that, despite this, circumvention practices started emerging soon thereafter. "U.S. subsidized and dumped biodiesel continues to enter the EU market, either in blends lower than 20 percent, such as B19, or, like in this case [of biodiesel confiscated in Venice], when it is exported via third countries to artificially conceal its origin, including by using false certificates of origin," the organization stated. "All of these practices are of illegal or fraudulent nature. Recently, the EBB has taken strong steps towards the European Anti-Fraud Office, the EC Commission DG Trade and EU national customs, in order to put an end to these unacceptable traffics which may represent a global fraud of more than Euros 100 million (\$128.89 million) of unpaid import duties to EU customs."

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