Biodiesel From Argentina And Indonesia

Investigation Nos. 731-TA-1347-1348 (Final)
U.S. International Trade Commission

COMMISSIONERS

Rhonda K. Schmidtlein, Chairman
David S. Johanson, Vice Chairman
Irving A. Williamson
Meredith M. Broadbent
Jason E. Kearns

_______________________________
Catherine DeFilippo
Director of Operations

_______________________________
Staff assigned
Nathanael Comly, Investigator
Philip Stone, Industry Analyst
Cindy Cohen, Economist
Charles Yost, Accountant
Russell Duncan, Senior Statistician
Carolyn Holmes, Statistical Assistant
Roop Bhatti, Attorney
Elizabeth Haines, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436
CONTENTS

Determinations ............................................................................................................................... 1
Views of the Commission ............................................................................................................... 3

Part I: Introduction ...................................................................................................................... I-1
  Background ................................................................................................................................ I-1
  Nature and extent of sales at LTFV ........................................................................................... I-2
  Critical circumstances ................................................................................................................ I-3

Appendixes

  A. Federal Register notices ........................................................................................................ A-1

Note.—Information that would reveal confidential operations of individual concerns may not be published. Such information is identified by brackets or by parallel lines in confidential reports and is deleted and replaced with asterisks in public reports.
On the basis of the record developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of biodiesel from Argentina and Indonesia that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").

BACKGROUND

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective March 23, 2017, following receipt of a petition filed with the Commission and Commerce by the National Biodiesel Board Fair Trade Coalition, Washington DC. The Commission held a public hearing in Washington, DC, on November 9, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel. Following notification of final determinations by Commerce that imports of biodiesel from Argentina and Indonesia were being sold at LTFV within the meaning of section 735(b) of the Act (19 U.S.C. 1673d(a)), notice of the scheduling of the final phase of the Commission’s antidumping duty investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 12, 2018 (83 FR 10747).

---

1 The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).
2 Commissioner Jason E. Kearns did not participate in these investigations.
3 The Commission also finds that imports subject to Commerce’s affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on biodiesel from Argentina.
VIEWS OF THE COMMISSION

Based on the record in the final phase of these investigations, we determine that an industry in the United States is materially injured by reason of imports of biodiesel from Argentina and Indonesia found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"). We also find that critical circumstances do not exist with respect to the entities exporting biodiesel from Argentina for which Commerce made final affirmative critical circumstances determinations.

I. Background

The National Biodiesel Board Fair Trade Coalition ("Petitioner") filed petitions in these antidumping duty investigations and the accompanying countervailing duty investigations of biodiesel from Argentina and Indonesia on March 23, 2017. Petitioner is an ad hoc association comprised of the National Biodiesel Board and 15 domestic producers which collectively account for the majority of U.S. biodiesel production.

Although the petitions for the antidumping and countervailing duty investigations of biodiesel from Argentina and Indonesia were filed on the same day, March 23, 2017, the investigation schedules became staggered when Commerce extended the deadline for making preliminary determinations in the antidumping duty investigations, thereby necessitating earlier final determinations by the Commission in the countervailing duty investigations than in the antidumping duty investigations. The Commission made affirmative determinations on the basis of cumulated subject imports in its investigations of biodiesel from Argentina and Indonesia.

The Commission’s record for the antidumping duty investigations closed on November 29, 2017, the same time as that for the countervailing duty investigations on subject imports from Argentina and Indonesia, except that the final Commerce antidumping duty determinations and the parties’ comments concerning those determinations have been added to the record.

II. Material Injury by Reason of Subject Imports

Section 771(7)(G)(iii) of the Tariff Act of 1930, as amended ("the Act"), provides that the Commission must make its material injury determinations in the instant investigations on the basis of the same record as that in the countervailing duty investigations regarding imports

---

1 Commissioner Jason E. Kearns did not participate in these investigations.
2 Biodiesel from Argentina and Indonesia, Inv. Nos. 701-TA-571-572 (Final), USITC Pub. 4748 (Dec. 2017) ("Biodiesel Final I").
3 Biodiesel Final I, USITC Pub. 4748 at 35.
from Argentina and Indonesia, except to the extent discussed above.⁵ Therefore, in these investigations, we adopt the findings and analyses in our determination and views regarding subject imports that are subsidized by the governments of Argentina and Indonesia with respect to the issues of domestic like product, domestic industry, negligibility, cumulation, conditions of competition, and material injury by reason of cumulated subject imports.⁶ Accordingly, we determine that the domestic industry producing biodiesel is materially injured by reason of subject imports from Argentina and Indonesia that Commerce determined were sold in the U.S. market at LTFV.⁷

III. Critical Circumstances

A. Legal Standards and Party Arguments

In its final antidumping duty determination concerning biodiesel from Argentina, Commerce found that critical circumstances exist with respect to LDC Argentina, S.A. and all other producers or exporters in that country not individually examined, except the Vicentin Group.⁸ Because we have determined that the domestic industry is materially injured by reason of subject imports from Argentina, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”⁹ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order” and specifically “whether the surge in imports prior to the suspension of liquidation, rather than the failure to provide retroactive relief, is likely to seriously undermine the remedial effect of the

---

⁶ See Biodiesel Final I, USITC Pub. 4748.
⁷ The statute additionally instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determinations, Commerce calculated antidumping duty margins that range from 60.44 percent to 86.41 percent for subject imports from Argentina and 92.52 percent to 276.65 percent for subject imports from Indonesia. See Biodiesel From Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part, 83 Fed. Reg. 8837 (Mar. 1, 2018); Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value, 83 Fed. Reg. 8835 (Mar. 1, 2018). We take into account in our analysis the fact that Commerce has made final findings that all subject producers in both subject countries are selling subject imports in the United States at less than fair value. In addition to this consideration, our impact analysis has considered other factors affecting domestic prices. Our analysis of the significant underselling and the other price effects of subject imports, described in Biodiesel Final I, are particularly probative to an assessment of the impact of the subject imports. See USITC Pub. 4748 at 28-35.
order.”10 The legislative history indicates that the critical circumstances provision was designed “to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and the preliminary determination by {Commerce}.”11 An affirmative critical circumstances determination by the Commission, in conjunction with an affirmative determination of material injury by reason of subject imports, would normally affect the retroactive imposition of duties for those imports subject to the affirmative Commerce critical circumstances determination for a period of 90 days prior to the suspension of liquidation.12

The statute further provides that in making these findings, the Commission shall consider, among other factors it considers relevant,

(I) the timing and the volume of the imports,
(II) a rapid increase in inventories of the imports, and
(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.13

In considering the timing and volume of subject imports, the Commission's practice is to consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding those firms for which Commerce has made an affirmative critical circumstances determination.14

Petitioner argues that the Commission should make an affirmative critical circumstances finding with respect to subject imports from Argentina.15 In making this argument, they urge the Commission to rely on a five-month period due to the imposition of the countervailing duty cash deposits in late-August 2017.16

U.S. importers BioSphere, Targray and Vitol argue that the Commission should make a negative critical circumstances finding with respect to imports from Argentina because such imports do not threaten to undermine the remedial effect of the antidumping duty order.17 BioSphere argues that the volume of subject imports in the cumulative six-month period before and after the filing of the petition, or even a period of comparison that was less than six

---

15 Petitioner’s Prehearing Brief at 80-81 (Nov. 2, 2017). Petitioner did not address critical circumstances in its supplemental comments on Commerce’s final antidumping duty determinations.
16 Petitioner’s Prehearing Br. at 81.
17 BioSphere Comments at 2-4; Targray and Vitol Comments at 2-3.
months, supports a negative critical circumstances finding.\textsuperscript{18} Similarly, Targray and Vitol argue that the increase in imports during a five-month comparison period does not represent a “massive increase.”\textsuperscript{19} Further, they argue that there is no rapid increase in U.S. importers’ inventories of subject imports and that the existence of other factors, such as seasonality, changes in apparent U.S. consumption, and timing of contracts, also supports a negative critical circumstances finding.\textsuperscript{20}

**B. Analysis**

We first consider the appropriate period for comparison of pre-petition and post-petition levels of subject imports from Argentina. In previous investigations, the Commission has relied on a shorter comparison period when Commerce’s preliminary determination applicable to the country at issue fell within the six-month post-petition period the Commission typically considers.\textsuperscript{21} That situation arises here with respect to subject imports from Argentina.\textsuperscript{22} Thus, we have determined to compare the volume of subject imports from entities subject to Commerce’s affirmative critical circumstances finding for the five months prior to the filing of the petition with the volume of such imports five months after the filing of the petition in our critical circumstances analysis regarding subject imports from Argentina.\textsuperscript{23}

The volume of imports from Argentina subject to Commerce’s affirmative critical circumstances finding was *** million gallons for the five-month period before the filing of the petition and *** million gallons for the five-month period following the filing of the petition, an increase of *** million gallons or *** percent.\textsuperscript{24} End of period inventories of imports from

\textsuperscript{18} BioSphere Comments at 2-3.
\textsuperscript{19} Targray and Vitol Comments at 2-3.
\textsuperscript{20} BioSphere Comments at 4-5; Targray and Vitol Comments at 3-4.
\textsuperscript{21} See Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates, Inv. Nos. 731-TA-1349, 1352, and 1357 (Final), USITC Pub. 4752 at 46-47 (Jan. 2018); Softwood Lumber Products from Canada, Inv. Nos. 701-TA-566 and 731-TA-1342 (Final), USITC Pub. 4749 at 44-45 (Dec. 2017); Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, Inv. Nos. 701-TA-545-547 and 731-TA-1291-1297 (Final), USITC Pub. 4638 at 49-50 (Sept. 2016); Certain Corrosion-Resistance Steel Products from China, India, Italy, Korea, and Taiwan, Inv. No. 701-TA-534-537 and 731-TA-1274-1278 (Final), USITC Pub. 4620 at 35-36 (July 2016).
\textsuperscript{23} The periods considered are November 2016 through March 2017 and April 2017 through August 2017. We note that our ultimate finding would have been the same if we had used a six-month comparison period.
\textsuperscript{24} Confidential Report (INV-PP-156, Nov. 27, 2017) (“CR”) at Table IV-2; Public Report (“PR”) at Table IV-2; see also Supplemental Confidential Report (INV-QQ-034, Mar. 23, 2018) at Table IV-2; Supplemental Public Report at Table IV-2.
Argentina were *** million gallons in June 2016 and *** million gallons in June 2017.\textsuperscript{25} The record also demonstrates that biodiesel is primarily sold from inventory, with importers of Argentine biodiesel reporting that all of their commercial shipments were from U.S. inventories.\textsuperscript{26} Moreover, the demand for biodiesel is seasonal, increasing in the second and third quarters of the year and stabilizing or declining in the fourth quarter.\textsuperscript{27} Thus, although the import volume and inventory levels increased in the post-petition period, we do not find that the increased volumes, particularly within the context of seasonal demand for biodiesel and the 2.2 billion gallons of apparent U.S. consumption in 2016,\textsuperscript{28} was massive or sufficiently large to undermine seriously the remedial effect of the order.

Taken as a whole, the data on record do not show a sudden and significant increase in imports from Argentina subject to Commerce’s affirmative critical circumstances determination subsequent to the filing of the petition that would seriously undermine the remedial effect of the antidumping duty order to be issued on biodiesel from Argentina. Consequently, we make a negative critical circumstances determination with regard to subject imports in the antidumping duty investigation of biodiesel from Argentina.

IV. Conclusion

For the reasons stated above, we determine that an industry in the United States is materially injured by reason of imports of biodiesel from Argentina and Indonesia that are sold in the United States at LTFV. We also find that critical circumstances do not exist with respect to imports from Argentina subject to Commerce’s affirmative critical circumstances determination.

\textsuperscript{25} CR/PR at Table VII-11. The end of period inventories from Argentina were *** as a ratio to U.S. imports, *** percent in June 2016 and *** percent in June 2017. \textit{Id.}

\textsuperscript{26} \textit{Biodiesel Final I}, USITC Pub. 4748 at II-15.

\textsuperscript{27} \textit{Biodiesel Final I}, USITC Pub. 4748 at 21.

\textsuperscript{28} CR/PR at Table IV-11.
PART I: INTRODUCTION

BACKGROUND

These investigations result from petitions filed with the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission ("USITC" or "Commission") by the National Biodiesel Board Fair Trade Coalition, Washington DC, on March 23, 2017, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value ("LTFV") imports of biodiesel\(^1\) from Argentina and Indonesia. The following tabulation provides information relating to the background of these investigations.\(^2\)

<table>
<thead>
<tr>
<th>Effective date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 23, 2017</td>
<td>Petition filed with Commerce and the Commission; institution of the Commission's investigations (82 FR 15541, March 29, 2017)</td>
</tr>
<tr>
<td>April 12, 2017</td>
<td>Commerce's notice of initiation of antidumping investigations (82 FR 18428, April 19, 2017) and countervailing duty investigations (82 FR 18423, April 19, 2017)</td>
</tr>
<tr>
<td>May 26, 2017</td>
<td>Postponement of Commerce's preliminary countervailing duty determinations (82 FR 25773, June 5, 2017)</td>
</tr>
<tr>
<td>August 15, 2017</td>
<td>Postponement of Commerce's preliminary antidumping duty determinations (82 FR 38670, August 15, 2017)</td>
</tr>
<tr>
<td>August 28, 2017</td>
<td>Commerce's preliminary countervailing duty determinations (Indonesia: 82 FR 40746; Argentina: 82 FR 40748); scheduling of final phase of the Commission's investigations (82 FR 43999, September 20, 2017)</td>
</tr>
<tr>
<td>October 31, 2017</td>
<td>Commerce's preliminary antidumping duty determinations (Argentina: 82 FR 50391; Indonesia: 82 FR 50379)</td>
</tr>
<tr>
<td>November 9, 2017</td>
<td>Commission's hearing</td>
</tr>
<tr>
<td>November 16, 2017</td>
<td>Commerce's final countervailing duty determinations (Argentina: 82 FR 53477; Indonesia: 82 FR 53471)</td>
</tr>
<tr>
<td>December 5, 2017</td>
<td>Commission's vote (countervailing duty)</td>
</tr>
</tbody>
</table>

1 For a complete description of the merchandise subject in this proceeding, see the section entitled “The Subject Merchandise” in Part I of Biodiesel From Argentina And Indonesia, Investigation Nos. 701-TA-571-572 (Final), USITC Publication 4748, December 2017.

2 Pertinent Federal Register notices are referenced in appendix A, and may be found at the Commission's website (www.usitc.gov).
<table>
<thead>
<tr>
<th>Effective date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 21, 2017</td>
<td>Commission’s views (countervailing duty)</td>
</tr>
<tr>
<td>December 21, 2017</td>
<td>Commission’s determinations (countervailing duty; 82 FR 61585, December 28, 2017)</td>
</tr>
<tr>
<td>March 1, 2018</td>
<td>Commerce’s final antidumping duty determinations (Argentina: 83 FR 8837; Indonesia: 83 FR 8835)</td>
</tr>
<tr>
<td>April 3, 2018</td>
<td>Scheduled date for the Commission’s vote (antidumping duty)</td>
</tr>
<tr>
<td>April 16, 2018</td>
<td>Scheduled date for Commission’s views (antidumping duty)</td>
</tr>
</tbody>
</table>

The information contained in this report is intended to be used in conjunction with data presented in the Commission’s report on *Biodiesel From Argentina And Indonesia, Investigation Nos. 701-TA-571-572 (Final)*, USITC Publication 4748, December 2017, and its corresponding confidential version contained in memorandum No. INV-PP-156, Investigation Nos. 701-TA-571-572 and 731-TA-1347-1348 (Final): *Biodiesel from Argentina and Indonesia*. No new information except for Commerce’s final determinations concerning biodiesel from Argentina and Indonesia, and party comments3 thereon is included in the record for this proceeding.

**NATURE AND EXTENT OF SALES AT LTFV**

On March 1, 2018, Commerce published a notice in the *Federal Register* of its final determination of sales at LTFV with respect to imports from Argentina4 and Indonesia.5 Table I-1 present Commerce’s dumping margins.

---

3 Party comments were filed on behalf of the National Biodiesel Board Fair Trade Coalition, Targray Industries, Inc., and Vitol, Inc, and BioSphere Fuels, LLC.


5 *Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835, March 1, 2018.
Table I-1
Biodiesel: Commerce’s preliminary and final weighted-average LTFV margins

<table>
<thead>
<tr>
<th>Entity</th>
<th>Preliminary dumping margin (percent)</th>
<th>Final dumping margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Argentina</td>
<td></td>
</tr>
<tr>
<td>LDC Argentina S.A.</td>
<td>54.36</td>
<td>60.44</td>
</tr>
<tr>
<td>Vicentin S.A.I.C.¹</td>
<td>70.05</td>
<td>86.41</td>
</tr>
<tr>
<td>All others</td>
<td>63.00</td>
<td>74.73</td>
</tr>
<tr>
<td></td>
<td>Indonesia</td>
<td></td>
</tr>
<tr>
<td>PT Musim Mas</td>
<td>50.71</td>
<td>276.65</td>
</tr>
<tr>
<td>Wilmar Trading PTE Ltd.</td>
<td>50.71</td>
<td>92.52</td>
</tr>
<tr>
<td>All others</td>
<td>50.71</td>
<td>92.52</td>
</tr>
</tbody>
</table>


CRITICAL CIRCUMSTANCES

In its preliminary determination, Commerce concluded that critical circumstances exist for imports of Argentina of biodiesel from LDC Argentina and all other producers or exporters not individually examined.⁶ On March 1, 2018, Commerce issued its final determination that it continues to find that critical circumstances exist with regard to imports from Argentina of biodiesel from LDC Argentina and all others.⁷ In this investigation, if both Commerce and the Commission make affirmative final critical circumstances determinations, certain subject imports may be subject to antidumping duties retroactive by 90 days from August 28, 2017, the effective date of Commerce’s preliminary affirmative LTFV determination. Table IV-2 presents these data.

Table IV-2
Biodiesel: U.S. importers’ U.S. imports from Argentina subject to Commerce’s antidumping duty critical circumstance findings, October 2016 through September 2017

| *          | *          | *          | *          | *          | *          | *          |

⁶ In addition, Commerce found that critical circumstances do not exist with respect to the Vicentin Group. Biodiesel from Argentina: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, 82 FR 50391, October 31, 2017.

APPENDIX A

FEDERAL REGISTER NOTICES
The Commission makes available notices relevant to its investigations and reviews on its website, [www.usitc.gov](http://www.usitc.gov). In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

<table>
<thead>
<tr>
<th>Citation</th>
<th>Title</th>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citation</td>
<td>Title</td>
<td>Link</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>December 8, 2017</td>
<td>Determinations of Sales in Less Than Fair Value Investigations and Extension of Provisional Measures</td>
<td></td>
</tr>
<tr>
<td>March 1, 2018</td>
<td>Fair Value</td>
<td></td>
</tr>
<tr>
<td>March 1, 2018</td>
<td>Fair Value and Final Affirmative Determination of Critical Circumstances, in Part</td>
<td></td>
</tr>
</tbody>
</table>