



Australian Government

**Australian Customs and
Border Protection Service**

AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2010/21

Biodiesel

Exported from the United States of America

Initiation of investigations into alleged dumping and subsidisation

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) has initiated investigations following an application lodged by Biodiesel Producers Limited. The application requests the publication of a dumping duty notice and countervailing duty notice in respect of biodiesel exported to Australia from the United States of America (USA).

The application alleges that the goods have been exported to Australia from the USA at prices less than their normal value, that countervailable subsidies have been received in respect of the goods exported from the USA to Australia, and that the dumping and subsidisation has caused material injury to the Australian industry through:

- lost sales volumes;
- loss of market share;
- price undercutting;
- reduced profits and profitability.

The non-confidential version of the application, made available on the public record, contains the basis of the alleged dumping and subsidisation.

A notice under subsection 269TC(4) of the *Customs Act 1901* (Act) advising initiation of these investigations was published in *The Australian* newspaper on 22 June 2010.

The goods

The goods the subject of the application (the goods) are fuel manufactured by chemically altering non-fossil origin feedstocks (including recycled materials from these sources) through a process of transesterification and/or esterification to form mono-alkyl esters (commonly known as 'biodiesel') whether in pure form (B100) or in a blend with a biodiesel percentage in excess of 20% (B20) exported from the USA.

The goods may be classified to tariff subheadings 2710.11.80 (statistical code 11), 2710.19.80 (statistical code 21), 2710.91.80 (statistical code 82), 2710.99.80 (statistical code 91), 3824.90.20 (statistical code 20) and 3824.90.30 (statistical code 46) in Schedule 3 of the *Customs Tariff Act 1995*. Imports from the USA under all the relevant classifications set out above attract a Customs duty rate of A\$0.38143 per litre.

Investigation process

The investigation period for both investigations is 1 April 2009 to 31 March 2010. Customs and Border Protection will examine exports to Australia of the goods during that period to determine whether dumping and/or subsidisation has occurred. Customs and Border Protection will examine details of the Australian market from 1 July 2007 for injury analysis.

In making findings in relation to the application for a dumping duty notice, the CEO must consider whether:

- (a) the export price of the goods that have already been exported to Australia is less than the normal value of those goods; and
- (b) the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- (c) because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened.

In making findings in relation to the application for a countervailing duty notice, the CEO must consider whether:

- (a) a countervailable subsidy has been received in respect of the goods that have already been exported to Australia; and
- (b) a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future; and
- (c) because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened.

Lodgement of submissions

Interested parties are invited to lodge submissions concerning the publication of the dumping duty notice and/or countervailing duty notice sought in the application no later than the close of business on 2 August 2010, addressed to:

Director Operations 3
Trade Measures Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Or by email: tmops3@customs.gov.au

Interested parties wishing to participate in the investigations must ensure that submissions are lodged promptly. Interested parties may be granted an extension of time for lodgement of a submission, provided the request is in writing and is reasonable and practical given the circumstances. Interested parties may reply to matters raised by other parties during the course of the investigation and in response to the statement of essential facts.

Interested parties should note that the CEO is not obliged to have regard to a submission received by Customs and Border Protection after the end of the period mentioned above if to do so would, in the CEO's opinion, prevent the timely placement of the statement of essential facts on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- provide a summary containing sufficient detail to allow a reasonable understanding of

the substance of the information that does not breach that confidentiality or adversely affect those interests, or

- satisfy the CEO that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "In-Confidence".

Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above. In either case, interested parties must provide two copies of each for the public record.

Public record

The CEO must maintain a public record of each inquiry. The public record must contain, among other things, a copy of all submissions from interested parties (letters and electronic mail are generally regarded as "submissions" if they contain information relevant to the inquiry). Documents included in the public record are available at <http://adpr.customs.gov.au/Customs/>

Alternatively, the public record may be examined at the office address below during business hours by contacting Trade Measures Branch on telephone number (02) 6275 6547.

Trade Measures Branch
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Provisional measures

A preliminary affirmative determination may be made not earlier than 60 days after the date of initiation provided that there appears to be sufficient grounds for the publication of a dumping duty notice and/or countervailing duty notice. In accordance with section 269TD of the Act, provisional measures, in the form of securities in respect of interim dumping duty and/or countervailing duty that may become payable on the goods, may be imposed where a preliminary affirmative determination has been made.

Statement of essential facts

The dates specified in this notice for lodging submissions must be observed to enable Customs and Border Protection to report to the Minister for Home Affairs (the Minister) within the legislative timeframe. A statement of essential facts will be placed on the public record by 10 October 2010, or by such later date as the Minister may allow in accordance with section 269ZHI of the Act. The statement will set out the essential facts on which the CEO proposes to base a recommendation to the Minister. That statement will invite interested parties to respond to the issues raised within 20 days of the statement being placed on the public record. Submissions to the SEF should also be lodged with Customs and Border Protection at the above mail or email address.

Report to the Minister

Submissions received in response to the statement of essential facts will be taken into account in completing the report and recommendation to the Minister. A recommendation to the Minister will be made in a report on or before 24 November 2010 (or such later date as the Minister may allow), unless the CEO terminates the investigation earlier under s269TDA of the Act.

Review Officer

Certain parties will have the right to seek review in accordance with Division 9 of Part XVB of the Act of either a decision by the CEO to terminate the investigation, or a decision of the Minister after considering the CEO's report.

Customs and Border Protection contact

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6544, fax number (02) 6275 6990 or email tmops3@customs.gov.au.

Geoff Johannes
National Manager
Trade Measures Branch
CANBERRA ACT

22 June 2010