

**EUROPEAN UNION AND A MEMBER STATE - CERTAIN MEASURES
CONCERNING THE IMPORTATION OF BIODIESELS**

Request for the Establishment of a Panel by Argentina

The following communication, dated 6 December 2012, from the delegation of Argentina to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I have been instructed by my authorities to request the establishment of a panel pursuant to Article 6 of the *WTO Understanding on Rules and Procedures Governing the Settlement of the Disputes*, regarding *European Union and a Member State - Certain Measures Concerning the Importation of Biodiesels* (DS443).

To that end, I would ask that this item be placed on the agenda of the next regular meeting of the Dispute Settlement Body (DSB), based on the following request:

On 17 August 2012, the Government of the Argentine Republic requested consultations with the European Union (EU) and the Kingdom of Spain in accordance with Articles 1 and 4 of the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 8 of the *Agreement on Trade-Related Investment Measures* (TRIMs Agreement), with regard to the provisions affecting the importation of biodiesels for the purpose of computing compliance with mandatory biofuel targets (Document WT/DS/443/1).

The consultations took place on 4 and 5 October 2012. While they enabled the parties to gain a better understanding of their respective positions, unfortunately the consultations failed to produce a mutually agreeable solution.

Ministerial Order (OM) IET/822/2012 governing the allocation of biodiesel production volumes for computing compliance with mandatory biofuel targets was published in the Official Journal of the Kingdom of Spain¹ on 21 April 2012. The operative part of the Order provides that computing for mandatory biofuel products may only be conducted in relation to biodiesel produced entirely in plants located in the territory of Spain or of another EU member State, and in line with previously allocated volumes, in accordance with the procedure established in the same Ministerial Order. It is Argentina's understanding that this provision leads to discrimination against the product from outside the Community and that it would imply a restriction on trade in biodiesels that is inconsistent with WTO rules on trade-related investment.

¹ Official Journal (BOE), No. 96, Section I, page 30992.

The Spanish legislation appears to have been promulgated under the powers granted to EU member States by Directive 2009/28/EC of the European Parliament and of the Council "on the promotion of the use of energy from renewable sources"; Directive 2003/30/EC of the European Parliament and of the Council, and the amendments thereto, establishing "annual targets for biofuels and other renewable fuels for transport purposes"; Royal Decree No. 459/2011 of the Kingdom of Spain, which establishes "mandatory targets for biofuels for the years 2011, 2012 and 2013"; and Ministerial Order ITC/2877/2008 "establishing a mechanism to promote the use of biofuels and other renewable fuels for transport purposes".

On 9 October 2012, the Ministry of Industry, Energy and Tourism of the Kingdom of Spain promulgated Ministerial Order IET/2199/2012², which entered into force on 17 October and partially amended Ministerial Order IET/822/2012.

Ministerial Order 2199 cancelled the individual call for economic operators to submit requests for the allocation of quotas for computing biofuel targets within a specific time-frame as laid down in the second additional provision of Ministerial Order IET/822/2012.

It is Argentina's understanding that in view of the limited scope of the amendment introduced by Ministerial Order IET/2199/2012, the *de jure* discrimination established by Ministerial Order IET/822/2012 continues to be fully operational, as do its restrictive effects.

Argentina considers Ministerial Order IET/822/2012 and its modifications and amendments as well as the related legislation and implementing regulations to be inconsistent with the obligations of the EU and of the Kingdom of Spain under the WTO.

In particular, Argentina considers that:

- By providing that only the owners of plants located in Spain and in the territory of the EU may request the allocation of annual biodiesel production volumes for computing biofuel obligations, the Spanish legislation violates the provisions concerning National Treatment on Internal Taxation and Regulation, specifically because it imposes a requirement which:
 - Affects the conditions governing the marketing of biodiesels that are not produced in the territory of the EU, in a manner inconsistent with Article III:1 of the GATT 1994;
 - establishes less favourable treatment as regards the conditions for the marketing and use of products that were not produced in the territory of the EU, in a manner inconsistent with Article III:4 of the GATT 1994;
 - establishes a local content requirement for the use of a product, in a manner inconsistent with Article III:5 of the GATT 1994.
- Moreover, since it is a regulation that lays down compliance obligations in order to obtain a benefit, and makes that benefit contingent upon the purchase of products of domestic or Community origin or source to the detriment of the same product of imported origin, it constitutes a trade-related investment measure (TRIM) that is inconsistent with national treatment obligations and with Articles 2.1 and 2.2 of the Agreement on Trade-Related Investment Measures.

² BOE, No. 249, Section I, page 73592.

- As a regulation which establishes mandatory compliance provisions that are inconsistent with the obligations of the EU and a member State under the covered agreements, it is inconsistent with Article XVI:4 of the Marrakesh Agreement.

The inconsistency of Ministerial Order IET/822/2012 with the above-mentioned provisions would nullify or impair the benefits accruing to Argentina under the covered agreements.

For the above reasons, Argentina respectfully requests the Dispute Settlement Body (DSB) to establish a panel pursuant to Article 6 of the DSU, with the standard terms of reference set out in Article 7.1 of the DSU, to examine the Spanish measure identified herein and find that it is inconsistent with the above-mentioned obligations of the EU and the Kingdom of Spain.

This request for the establishment of a panel covers the measure contested by Argentina as well as any modifications and amendments, related measures and implementation measures.

Argentina would be grateful if you would place this item on the agenda of the next DSB meeting, to be held on 17 December 2012, and circulate this request to Members.
