

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

Request for Consultations by Argentina

The following communication, dated 17 August 2012, from the delegation of Argentina to the delegations of the European Union and Spain and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I have received instructions from my authorities to request consultations with the European Union (EU) as well as with 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.

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 Order appears to have been promulgated under the powers delegated 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, and the amendments thereto, establishing "annual targets for biofuels and other renewable fuels for transport purposes"; Royal Decree No. 459/2011, 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".

The operative part of Ministerial Order (OM) IET/822/2012 provides that computing for mandatory biofuel targets may only be conducted in relation to biodiesel produced entirely in plants located on 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.

The Argentine Republic has since 2007 developed one of the most efficient biodiesel production sectors in the world and has now consolidated its position as the world's leading exporter of the product. The European Union is the main export market, and Spain is the main buyer on that market. In 2011, Argentine exports of biodiesel amounted to US\$2.1 billion, with more than

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

US\$1.9 billion going to the EU and more than US\$1 billion of the latter figure representing purchases by Spain.

Ministerial Order (OM) IET/822/2012 and the implementation thereof would create discrimination between the product of European origin and that of other origins, implying a de facto prohibition on imports of biodiesel from outside the Community, for purposes of computing compliance with mandatory biofuel targets. This would totally exclude the Argentine product from the market.

It is Argentina's understanding that the Spanish Ministerial Order and its implementation would in principle constitute an infringement of obligations, including, but not limited to, the obligations of that country and of the EU under Articles III:1, III:4, III:5 and XI:1 of the GATT 1994. Argentina also considers that the Order would be inconsistent with Articles 2.1 and 2.2 of the Agreement on Trade-Related Investment Measures (TRIMS), and with Article XVI:4 of the Marrakesh Agreement. Argentina considers that Ministerial Order (OM) IET/822/2012 would nullify or impair the benefits accruing to it under the covered agreements.

Argentina reserves the right to include rules related to or amending those referred to in this request for consultations, as well as to increase the claims relating thereto, in the course of the consultations.

Argentina looks forward to a favourable response to this request for consultations and expresses its readiness to coordinate the date and place for the consultations.
