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**EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL
FROM ARGENTINA**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY ARGENTINA

The following communication, dated 13 March 2014, from the delegation of Argentina to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 19 December 2013, the Government of Argentina ("Argentina") requested consultations with the European Union pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the GATT 1994* ("Anti-Dumping Agreement") with respect to Article 2(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and with respect to the anti-dumping measures imposed on biodiesel originating in, *inter alia*, Argentina.¹

Argentina and the European Union held consultations on 31 January 2014 with a view to reaching a mutually satisfactory solution. Although the consultations allowed for a better understanding of the positions of the parties, unfortunately, they have not led to a satisfactory resolution of the matter.

1. THE MEASURES AT ISSUE

Argentina considers that the measures, as enumerated below, are inconsistent with the obligations of the European Union under the relevant provisions of the WTO Agreements as set forth below in detail:

A) Article 2(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community² as well as any subsequent amendments, replacements, implementing measures and related instruments or practices.

B) The anti-dumping measures³ imposed by the European Union on imports of biodiesel originating in, *inter alia*, Argentina, as well as the underlying investigation.

¹ WT/DS473/1, G/ADP/D101/1, G/L/1062.

² Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), OJ L 343, 22.12.2009, p. 51 and corrigendum to Council Regulation (EC) No 1225/2009, OJ L 7, 12.1.2010, p. 22, as amended, including by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012, OJ L 237, 3.9.2012, p.1; Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012, OJ L 344, 14.12.2012, p.1 and Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014, OJ L18, 21.1.2014, p.1.

³ Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia, OJ L 141, 28.5.2013, p. 6 and Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, OJ L 315, 26.11.2013, p. 2.

The imposition of the anti-dumping measures on imports of biodiesel followed the initiation of an anti-dumping proceeding concerning imports of biodiesel originating in, *inter alia*, Argentina⁴ by the Commission, after receiving a complaint from the European Biodiesel Board ("EBB") alleging that imports of biodiesel originating in Argentina and Indonesia were being dumped and were thereby causing material injury to the Union industry.

The European Union imposed provisional anti-dumping duties on imports of biodiesel originating in, *inter alia*, Argentina, pursuant to Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia.⁵

The definitive measures were imposed by the European Union pursuant to Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia.⁶

The measures at issue include all those mentioned above as well as any subsequent amendments, replacements, related measures and implementing measures.

2. LEGAL BASIS FOR THE CLAIMS

A) Article 2(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (the "Basic Regulation")⁷

Article 2(5) of the Basic Regulation *inter alia* provides that if costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

Pursuant to this provision, when the European Union considers that the costs of manufacturing the product under consideration actually incurred by the producer under investigation are artificially low or are otherwise distorted, it does not calculate the costs on the basis of the records of the producer under investigation although those records are in accordance with the generally accepted accounting principles of the exporting countries and reasonably reflect the costs associated with the production and sale of the product under consideration but adjusts those costs or establishes them on the basis of other data, including data pertaining to markets other than those of the exporting country.

Argentina considers that Article 2(5) of the Basic Regulation is inconsistent as such with, *inter alia*, the following provisions of the Anti-Dumping Agreement, the GATT 1994 and the Marrakesh Agreement Establishing the World Trade Organization ("Marrakesh Agreement"):

1. Article 2.2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because these provisions do not permit to adjust or establish the cost of production on the basis of data or information other than that in the country of origin.
2. Articles 2.2, 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 for two reasons: first, since these provisions require that the costs be calculated on the basis of the records kept by the producers under investigation when such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration

⁴ Notice of Initiation of an anti-dumping proceeding concerning imports of biodiesel originating in Argentina and Indonesia, OJ C 260, 29.8.2012, p. 8.

⁵ Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia, OJ L 141, 28.5.2013, p. 6.

⁶ Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, OJ L 315, 26.11.13, p. 2.

⁷ As well as any subsequent amendments, replacements, implementing measures and related instruments or practices.

and do not permit to adjust or replace the costs actually incurred by the producers under investigation by other costs simply because they are considered to be artificially low or distorted; secondly, since these provisions require that the costs used be associated with the production and sale of the product under consideration.

3. Article 9.3 of the Anti-Dumping Agreement since, by failing to construct normal values in accordance with Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement, the amount of the anti-dumping duty to be imposed exceeds the margin of dumping if correctly calculated on the basis of the rules included in Article 2 of the Anti-Dumping Agreement.
4. Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Anti-Dumping Agreement, insofar as the European Union has not taken all steps to ensure the conformity of its laws, regulations and administrative procedures with the provisions of the GATT 1994 and of the Anti-Dumping Agreement.

B) The anti-dumping measures imposed by the European Union on imports of biodiesel originating in, *inter alia*, Argentina and the underlying investigation

Argentina considers that the anti-dumping measures imposed by the European Union on imports of biodiesel originating in, *inter alia*, Argentina⁸ and the underlying investigation are inconsistent with the following provisions of the Anti-Dumping Agreement and of the GATT 1994:

1. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 because, when constructing the normal value for the producers under investigation, the European Union failed to calculate the costs on the basis of the records kept by the producers under investigation, and because the European Union therefore failed to properly calculate the cost of production and properly construct normal value.
2. Articles 2.1 and 2.2 of the Anti-Dumping Agreement because the European Union failed to construct normal value for the producers under investigation on the basis of the cost of production in Argentina.
3. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994 because when constructing the normal value for the producers under investigation, the European Union included costs that do not reasonably reflect the costs associated with the production and sale of biodiesel and therefore failed to properly calculate the cost of production and to properly construct normal value.

Argentina also considers that Article 2(5) of the Basic Regulation as applied in the investigation underlying the anti-dumping measures is inconsistent with Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement as set forth in claims 1, 2 and 3 above.

4. Articles 2.1, 2.2 and 2.2.2(iii) of the Anti-Dumping Agreement because the amounts for profits established by the European Union were not determined on the basis of a reasonable method.
5. Article 2.4 of the Anti-Dumping Agreement because, in comparing a constructed normal value that included a cost of production based on an average of the FOB reference prices (international prices) of the raw material with prices that reflect the actual costs of the raw material incurred by the exporters or producers under investigation, the European Union failed to make due allowance for differences affecting price comparability, including differences in taxation, thereby precluding a fair comparison between the export price and normal value.
6. Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 because the European Union imposed and levied anti-dumping duties in excess of the margin of dumping that should have been established in accordance with Article 2 of the Anti-Dumping Agreement.

⁸ See footnote 3.

7. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because the European Union's injury determination is not based on positive evidence and does not involve an objective examination of the consequent impact of the allegedly dumped imports on domestic producers of the like product, *inter alia*, in relation to capacity and capacity utilization of the domestic industry.
8. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because the European Union failed to conduct an objective examination, based on positive evidence, of the causal relationship between the allegedly dumped imports and the allegedly injury to the domestic industry and because the European Union failed to conduct an objective examination, based on positive evidence, of factors other than the allegedly dumped imports which at the same time were injuring the domestic industry, and thus attributed the injury caused by these other factors to the allegedly dumped imports. The other factors include, *inter alia*, the overcapacity of the domestic industry of the European Union, the imports of biodiesel made by the domestic industry of the European Union, the effect of the "double-counting" regimes on the domestic demand for biodiesel in the European Union and the lack of vertical integration and access to raw materials of the domestic industry of the European Union.

In view of the claims set forth above, Argentina considers that the European Union has also acted inconsistently with Article VI of the GATT 1994 and Article 1 of the Anti-Dumping Agreement.

The measures at issue also appear to nullify or impair benefits accruing to Argentina directly or indirectly under the cited Agreements.

For the reasons set forth above, Argentina respectfully requests that a panel be established, pursuant to Article 4.7 and Article 6 of the DSU, Article XXIII of the GATT and Article 17.4 of the Anti-Dumping Agreement by the Dispute Settlement Body, with standard terms of reference as set forth in Article 7.1 of the DSU.

Argentina asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 26 March 2014.
