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Page: 1/3

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## EUROPEAN UNION - ANTI-DUMPING MEASURES ON BIODIESEL FROM ARGENTINA

### REQUEST FOR CONSULTATIONS BY ARGENTINA

The following communication, dated 19 December 2013, from the delegation of Argentina to the delegation of the European Union 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 in accordance with 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 General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with respect to:

- a. Provisional<sup>1</sup> and definitive<sup>2</sup> anti-dumping measures imposed by the European Union on imports of biodiesel originating, *inter alia*, in Argentina, and the investigation<sup>3</sup> that led to the imposition of the measures. These measures appear to be inconsistent with the European Union's obligations under the following provisions of the GATT 1994 and the Anti-Dumping Agreement:
  1. Article 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because the European Union did not calculate the costs on the basis of the records kept by the exporters or producers under investigation and because the European Union did not properly determine the costs of production;
  2. Article 2.1 and 2.2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994, because in constructing the normal value, the European Union did not use the production cost in the country of origin;
  3. Article 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement, because in constructing the normal value, the European Union included costs not associated with the production and sale of the product under consideration;
  4. Article 2.4 of the Anti-Dumping Agreement, because the European Union did not make a fair comparison between the export price and the normal value and because the European Union did not make due allowance for differences which affect price comparability, including differences in taxation;

<sup>1</sup> The provisional measures were imposed through 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.

<sup>2</sup> The definitive measures were imposed through 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.

<sup>3</sup> The investigation was initiated pursuant to the 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. Article 2.2 and 2.2.2 of the Anti-Dumping Agreement, because the European Union did not properly determine the amounts for profits in accordance with the rules established under those articles;
6. Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994, because the amount of the anti-dumping duty imposed by the European Union exceeds the margin of dumping as established under Article 2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994;
7. Article 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement, because the European Union's determination of injury, particularly as regards imports of products manufactured by the domestic<sup>4</sup> industry, was not based on positive evidence and did not involve an objective examination of the volume of the allegedly dumped imports and the effect of the allegedly dumped imports on prices in the domestic market for like products, and the consequent impact of these allegedly dumped imports on domestic producers of such products;
8. Article 3.1 and 3.4 of the Anti-Dumping Agreement, because the European Union's determination of injury was not based on positive evidence, nor did it involve an objective examination of the consequent impact of the allegedly dumped imports on domestic producers of the like product, *inter alia* with regard to capacity and utilization of capacity of the domestic industry;
9. Article 3.1 and 3.5 of the Anti-Dumping Agreement, because the European Union did not carry out an objective examination, based on positive evidence, of the causal relationship between the allegedly dumped imports and the alleged injury to the domestic industry, and because the European Union did not carry out 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 those factors to the allegedly dumped imports;
10. Article 6.5, 6.5.1, 6.4 and 6.2 of the Anti-Dumping Agreement, because the European Union failed to provide timely opportunities for the interested parties to examine the information that was relevant to the presentation of their cases, including, *inter alia*, data concerning the establishment of margins of dumping and the determination of injury, and to prepare their presentations on the basis of that information, thereby depriving the interested parties of the full opportunity for the defence of their interests.

The European Union's anti-dumping measures on biodiesel originating, *inter alia*, in Argentina, also appear to be inconsistent with Articles 1 and 18 of the Anti-Dumping Agreement and with Article VI of the GATT 1994 as a result of the above-mentioned violations.

- b. 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<sup>5</sup> in that it establishes 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. This measure appears to be inconsistent *as such* with the following obligations of the European Union:
  1. Article 2.2 of the Anti-Dumping Agreement, which requires that the cost of production *in the country of origin* be used to determine the margin of dumping

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<sup>4</sup> The term "domestic" is used to refer to the European industry as defined in Article 4 of Council Regulation (EC) No. 1225/2009 on protection against dumped imports from countries not members of the European Community, OJ L 343, 22.12.2009, p. 51.

<sup>5</sup> Council Regulation (EC) No. 1225/2009 on protection against dumped imports from countries not members of the European Community, OJ L 343, 22.12.2009, p. 51.

on the basis of a comparison between the export price and the production cost plus a reasonable amount for administrative, selling and general costs and for profits;

2. Article 2.2.1.1 of the Anti-Dumping Agreement, which requires that costs normally be calculated on the basis of records kept by the exporter or producer under investigation;
3. Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization and Article 18.4 of the Anti-Dumping Agreement, since the European Union did not take all of the necessary measures to ensure conformity of its laws, regulations and administrative procedures with the provisions of the GATT 1994 and the Anti-Dumping Agreement.

The above-mentioned measures of the European Union appear to nullify or impair, directly or indirectly, the benefits accruing to Argentina under the mentioned agreements.

Argentina reserves the right to address additional measures and claims in respect of the mentioned issues, including any amendment, replacement, extension, implementation measures or other related measures, in the course of the consultations.

Argentina awaits the response of the European Union to this request in order to coordinate a mutually convenient date and place for the consultations.

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