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**EUROPEAN UNION AND CERTAIN MEMBER STATES – CERTAIN MEASURES ON THE
IMPORTATION AND MARKETING OF BIODIESEL AND MEASURES
SUPPORTING THE BIODIESEL INDUSTRY**

REQUEST FOR CONSULTATIONS BY ARGENTINA

The following communication, dated 15 May 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.

My authorities have instructed me to request consultations with the European Union (EU) and its Member States pursuant to Articles 1 and 4 of the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 4.1, Article 7.1 and Article 30 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement), Article 8 of the *Agreement on Trade-Related Investment Measures* (TRIMs Agreement) and Article 14 of the *Agreement on Technical Barriers to Trade* (TBT Agreement), regarding certain measures imposed by the EU and/or its Member States that affect the importation and marketing of biodiesel and implementing measures, as well as measures supporting the biodiesel sector (hereinafter "the measures").

This request for consultations is divided in two parts. Part (A) refers to measures imposed by the EU for the promotion of the use of energy from renewable sources and the introduction of a mechanism to control and reduce greenhouse gas emissions, as well as certain measures for their implementation at the level of the Member States of the EU.

Part (B) refers to the measures adopted by some Member States relating to the implementation of the EU measures and the establishment of support schemes for the biodiesel sector.

PART A

European Union

Argentina has identified the following measures in relation to the contested measures in this Part:

- (1) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, published in the *Official Journal of the European Communities* of 5 June 2009.
- (2) Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used

by inland waterway vessels and repealing Directive 93/12/EEC, published in the *Official Journal of the European Communities* of 5 June 2009;

Member States of the European Union

- (3) Royal Decree of 26 November 2011 establishing product standards for biofuels, published in the *Moniteur Belge* of 7 December 2011¹;
- (4) Articles L. 661-1 to L. 661-9 of the French Energy Code, amended by Ordinance No. 2011-1105 of 14 September 2011: transposition of Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009, published in the *Journal Officiel de la République française* of 17 September 2011²;
- (5) Ordinance No. 2011-1105 of 14 September 2011 transposing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009 in the field of renewable energy and biofuels, published in the *Journal Officiel de la République française* of 16 September 2011³;
- (6) Decree No. 2011-1468 of 9 November 2011 adopted pursuant to the Ordinance transposing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009 in the field of renewable energy and biofuels, published in the *Journal Officiel de la République française* of 10 November 2011⁴;
- (7) Order of 23 November 2011 adopted pursuant to Ordinance No. 2011-1105 of 14 September 2011 and to Decree No. 2011-1468 of 9 November 2011 and related to the sustainability of biofuels and bioliquids, published in the *Journal Officiel de la République française* of 26 November 2011⁵;
- (8) Order of 25 October 2007 on the Renewable Transport Fuel Obligations⁶, amended by the Order of 7 December 2011 on the Renewable Fuel Obligations⁷ (United Kingdom);
- (9) Legislative Decree No. 66/2005 of 21 March 2005 published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 96 of 27 April 2005⁸, amended by Article 1 of Legislative Decree No. 55/2011 of 31 March 2011, which transposes Directive 2009/30/EC, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 97 of 28 April 2011⁹;
- (10) Interministerial Decree of 23 January 2012, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 31 of 7 February 2012¹⁰, amended by the Interministerial Decree of 11 June 2012 published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 141 of 19 June 2012¹¹, and by the Interministerial Decree of 12 November 2012,

¹ Arrêté royal établissant des normes de produits pour les biocarburants.

² Articles L. 661-3 à L. 661-6 du Code de l'énergie.

³ Ordonnance du 14 septembre 2011 portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants.

⁴ Décret n° 2011-1468 du 9 novembre 2011 pris en application de l'ordonnance portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants.

⁵ Arrêté du 23 novembre 2011 pris en application de l'ordonnance n° 2011-1105 du 14 septembre 2011 et du décret n° 2011-1468 du 9 novembre 2011 et relatif à la durabilité des biocarburants et des bioliquides.

⁶ The Renewable Transport Fuel Obligations Order 2007, SI 2007/3072.

⁷ The Renewable Transport Fuel Obligations (Amendment) Order 2011, SI 2011/2937.

⁸ Decreto Legislativo 21 marzo 2005, n. 66, di attuazione della direttiva 2003/17/CE relativa alla qualità della benzina e del combustibile diesel.

⁹ Decreto Legislativo 31 marzo 2011, n. 55, di attuazione della direttiva 2009/30/CE, che modifica la direttiva 98/70/CE, per quanto riguarda le specifiche relative a benzina, combustibile diesel e gasolio, nonché l'introduzione di un meccanismo inteso a controllare e ridurre le emissioni di gas a effetto serra, modifica la direttiva 1999/32/CE per quanto concerne le specifiche relative al combustibile utilizzato dalle navi adibite alla navigazione interna e abroga la direttiva 93/12/CEE.

¹⁰ Decreto 23 gennaio 2012, recante il "Sistema nazionale di certificazione per biocarburanti e bioliquidi".

¹¹ Decreto 11 giugno 2012, recante "Modifiche al decreto 23 gennaio 2012, recante il Sistema nazionale di certificazione per i biocarburanti e i bioliquidi".

published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 271 of 20 November 2012¹²;

- (11) Royal Decree No. 1597/2011 of 4 November 2011 regulating the sustainability criteria of biofuels and bioliquids, the National System of Verification of Sustainability and double counting of certain biofuels, published in the *Boletín Oficial del Estado* No. 267 of 5 November 2011 (Spain);

and all amendments, revisions, replacements, implementing measures, and measures related to those identified above; as well as all other implementing measures of Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council adopted by the EU Member States that have not been identified in this section and for the identification of which Argentina requests the assistance of the European Commission during the consultations.

The measures referred to in this Part establish sustainability criteria with which biofuels¹³ and bioliquids must comply in order to be taken into account when measuring compliance with the targets of the EU Member States in the field of renewable energy and in order that these biofuels and bioliquids may benefit from the incentives for their use.

In order to be considered sustainable, biofuels and bioliquids must, among other criteria, result in the saving of at least 35% of greenhouse gas emissions with respect to fossil fuels.¹⁴

Argentina does not object either to the use of sustainability criteria or to a methodology by which greenhouse gas emissions savings are calculated. In fact, the biodiesel sector of Argentina stands out due to its environmental and social sustainability. The efficiency of its integrated production facilities, their proximity to areas where the feedstock is grown and to deepwater ports results in significant greenhouse gas savings. However, Argentina considers that the above-mentioned threshold of 35% is arbitrary, and appears neither to be scientifically justified nor to be based on a recognized international norm or standard.

The default value assigned by these measures to soybean biodiesel is 31%. This implies that soybean biodiesel produced in Argentina cannot comply with the criteria for the reduction of the greenhouse gas emissions to be considered sustainable on the basis of the default value.

As a result, there are only two available alternatives for biodiesel originating in Argentina to qualify for the above-mentioned treatment:

- (1) either the economic operators calculate the greenhouse gas emissions savings each time they export their product to the EU; or
- (2) they can show compliance with the sustainability criteria through a voluntary scheme which the European Commission may decide to recognize for that purpose.

The first alternative represents an additional requirement that must be fulfilled by the biodiesel producers for each transaction. With respect to the second alternative, the *Cámara Argentina de Biocombustibles* (CARBIO, an entity comprised of the exporters of biofuels in Argentina) presented a voluntary scheme to the Commission and applied for its recognition in December 2010. However, until now the scheme has not yet been approved by the European Commission.

¹² Decreto 12 novembre 2012, recante "Ulteriori modifiche ed integrazioni al decreto 23 gennaio 2012, recante il Sistema nazionale di certificazione per biocarburanti e bioliquidi".

¹³ For the purposes of this request for consultations, Argentina will indistinctly use the terms "biocarburantes" and "biocombustibles" in Spanish.

¹⁴ Article 17 of Directive 2009/28/EC and Article 7b of Directive 98/70/EC as modified by Directive 2009/30/EC.

Argentina considers that these measures are inconsistent with, *inter alia*, the following obligations:

- Article I:1 of the GATT 1994 as they appear to grant an advantage, favour, privilege or immunity to products originating in other Members without according them immediately and unconditionally to the like product originating in the territory of Argentina.
- Article III:1 of the GATT 1994 because the application of the measures in question appears to affect the offering for sale or the use of the product in the EU internal market so as to afford protection to domestic production in the EU.
- Article III:4 of the GATT 1994 because the measures appear to be laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution and use of these products, and because they result in a less favourable treatment accorded to biodiesel from Argentina than that accorded to biodiesel of national origin.
- Article 2.1 of the TBT Agreement because these measures appear to be technical regulations that accord to products imported from Argentina less favourable treatment than that accorded to like products of national origin and like products originating in other countries.
- Article 2.2 of the TBT Agreement because these measures appear to be technical regulations the object or effect of which is to create unnecessary obstacles to international trade and they appear to be more trade-restrictive than necessary to fulfil a legitimate objective.
- Article 5.1 and 5.2 of the TBT Agreement, because the application of the measures invoked, and in particular the conformity assessment procedures, to CARBIO's request for the recognition of its voluntary scheme appears, among other effects, to grant access to suppliers of biodiesel originating in Argentina under conditions less favourable than those accorded to suppliers of like products of national origin or originating in any other country, to create unnecessary obstacles to international trade, and not to be undertaken and completed as expeditiously as possible and in such a way as to ensure a no less favourable order for products originating in Argentina than for the like domestic products.
- Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization because the measures do not appear to conform to the obligation of the European Union to ensure the conformity of its laws, regulations and administrative procedures with the obligations incumbent upon it under the annexed Agreements.

PART B

Argentina has identified the following measures in relation to the contested measures in this Part:

Belgium

- (1) Programme Law of 27 December 2004, published in the *Moniteur Belge* of 31 December 2004¹⁵, amended by the Law of 24 December 2012 amending Article 419 of the Programme Law of 27 December 2004 and Article 4 of the Law of 10 June 2006, published in the *Moniteur Belge* of 28 December 2012;

¹⁵ Loi programme du 27 décembre 2004.

- (2) Law of 22 July 2009 on the incorporation obligation of biofuels into fossil fuels released for consumption, published in the *Moniteur Belge* of 3 August of 2009¹⁶;
- (3) Royal Decree of 10 August 2009 concerning the information and management obligations, the control of the obligations and the administrative fines of the Law of 22 July 2009 concerning the incorporation obligation biofuels into fossil fuels released for consumption and other provisions, published in the *Moniteur Belge* of 17 August 2009¹⁷;
- (4) Royal Decree of 23 June 2011 on the extension of the application of the Law of 22 July 2009 concerning the incorporation obligation of biofuels into fossil fuels released for consumption, published in the *Moniteur Belge* of 30 June 2011¹⁸;
- (5) Law of 10 June 2006 concerning biofuels, published in the *Moniteur Belge* of 16 June 2006¹⁹, amended by the Law of 24 December 2012 amending Article 419 of the Programme Law of 27 December 2004 and Article 4 of the Law of 10 June 2006, published in the *Moniteur Belge* of 28 December 2012²⁰;
- (6) Royal Decree of 9 February 2011 concerning biofuels, published in the *Moniteur Belge* of 23 February 2011²¹;

and all amendments, revisions, replacements, implementing measures and related measures.

Some or all of these measures appear to be aimed at implementing or transposing:

- Council Directive 2003/96/EC of 27 October 2003 restructuring the Community regime for the taxation of energy products and electricity;
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC; and/or
- Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

According to these measures, any petroleum company that releases fuels and/or diesel products for consumption also has to release for consumption certain amounts of sustainable biofuels. These measures establish that only biofuels produced in the EU can be considered as "sustainable biofuels". However, since biodiesel produced in Argentina is not considered as "sustainable biofuel", it can neither be considered for the purposes of the incorporation obligation laid down in these measures, nor can it benefit from the excise duty reduction provided for therein.

These measures also provide that a reduced excise duty rate is applied to diesel which contains a certain percentage of fatty acid methyl ester falling within CN code 3824 90 99 (FAME)

¹⁶ Loi du 22 juillet 2009 relative à l'obligation d'incorporation de biocarburant dans les carburants fossiles mise à la consommation.

¹⁷ Arrêté Royal du 10 août 2009 relatif aux obligations en matière d'information et d'administration, au contrôle des obligations et aux amendes administratives de la loi du 22 juillet 2009 relative à l'obligation d'incorporation de biocarburant dans les carburants fossiles mis à la consommation et autres dispositions.

¹⁸ Arrêté Royal du 23 juin 2011 portant prolongation de l'application de la loi du 22 juillet 2009 relative à l'obligation d'incorporation de biocarburant dans les carburants fossiles mis à la consommation.

¹⁹ Loi du 10 juin 2006 concernant les biocarburants.

²⁰ Loi du 24 décembre 2012 portant modification de l'article 419 de la loi-programme du 27 décembre 2004 et de l'article 4 de la loi du 10 juin 2006 concernant les biocarburants.

²¹ Arrêté Royal du 9 février 2011 concernant les biocarburants.

produced in production units which have been approved by the customs and excise duty administration. According to these measures, only production units that are located in the territory of an EU Member State can receive such approval.

Argentina considers that these measures are inconsistent with, *inter alia*, the following obligations:

- Article III:2 of the GATT 1994 because biodiesel imported from Argentina to the EU is subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products and internal taxes or other internal charges are applied to biodiesel imported from Argentina contrary to the principles set out in Article III:1.
- Article III:4 of the GATT 1994 because the measures appear to be laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution and use of these products, and because they result in a less favourable treatment accorded to biodiesel from Argentina than that accorded to biodiesel of national origin.
- Article III:5 of the GATT 1994 because the measures appear to be an internal quantitative regulation relating to the mixture, processing or use of certain products in specified amounts or proportions which requires that any specified amount or proportion of any product which is the subject of these measures must be supplied from domestic sources.
- Article 2.1 and 2.2 of the TRIMs Agreement, read alone or in conjunction with Article 1(a) of the Illustrative List annexed to the Agreement because the measures appear to be investment measures related to trade in goods which are inconsistent with Article III of the GATT 1994.
- Article 3.1(b) and 3.2 of the SCM Agreement because it appears that a subsidy is granted within the meaning of Article 1.1 of the SCM Agreement, there being a financial contribution that confers a benefit. The subsidy appears to be a prohibited subsidy because it is granted on the condition that biodiesel which is produced in the EU is used. Since the subsidy is covered by the provisions of Article 3 of the SCM Agreement, it would also be considered to be specific pursuant to Article 2.3 of the SCM Agreement; or alternatively
- Article 5(b) and/or 5(c) of the SCM Agreement because it appears that an adverse effect is caused to the interests of Argentina through the use of subsidies within the meaning of Article 1.1 of the SCM Agreement. These subsidies appear to cause adverse effects because they cause a serious prejudice to the interests of another Member within the meaning of Article 6.3(a).

Articles 4.2 and 7.2 of the SCM Agreement require that a request for consultations made pursuant to paragraph 1 of those Articles shall include a statement of available evidence with regard to the existence and nature of the subsidy in question and the serious prejudice. The evidence is listed in the Annex to this request.

France

- (1) Article 265 *bis* A of the Customs Code: Implementation of a tax exemption scheme for certain biofuels, amended by Ordinance No. 2011-1105 of 14 September 2011 transposing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009, published in the *Journal Officiel de la République française* of 16 September 2011²²;

²² Article 265 *bis* A du code des douanes.

- (2) Ordinance No. 2011-1105 of 14 September 2011 implementing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009, published in the *Journal Officiel de la République française* of 16 September 2011²³;
- (3) Decree No. 2004-506 of 7 June 2004 on the application procedure of Article 265 *bis* A of the Customs Code, published in the *Journal Officiel de la République française* of 10 June 2004²⁴;
- (4) Order of 27 October 2003 concerning the conditions required to participate in the call for applications for release for consumption of biofuels in France resulting in an internal consumption tax reduction on petroleum products, published in the *Journal Officiel de la République française* of 8 November 2003²⁵;

and all amendments, revisions, replacements, implementing measures and related measures.

Some or all of these measures appear to be aimed at implementing or transposing:

- Council Directive 2003/96/EC of 27 October 2003 restructuring the Community regime for the taxation of energy products and electricity;
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC; and/or
- Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

These measures grant a reduction of the internal consumption tax to certain biofuels, including biodiesel, within the limit of the amount set in the licence and subject to certain conditions.

Argentina considers that these measures are inconsistent with, *inter alia*, the following obligations:

- Article 3.1(b) and 3.2 of the SCM Agreement because it appears that a subsidy is granted within the meaning of Article 1.1 of the SCM Agreement, there being a financial contribution that confers a benefit. The subsidy appears to be a prohibited subsidy because it appears to be contingent on the use of biodiesel produced in the EU. Since the subsidy is covered by the provisions of Article 3 of the SCM Agreement, it would also be considered to be specific pursuant to Article 2.3 of the SCM Agreement; or alternatively
- Article 5(b) and/or 5(c) of the SCM Agreement because it appears that an adverse effect is caused to the interests of Argentina through the use of subsidies within the meaning of Article 1.1 of the SCM Agreement. These subsidies appear to cause adverse effects because they cause a serious prejudice to the interests of another Member within the meaning of Article 6.3(a) of the SCM Agreement.

²³ Ordonnance n° 2011-1105 du 14 septembre 2011 portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants.

²⁴ Décret n° 2004-506 du 7 juin 2004 relatif aux modalités d'application de l'article 265 *bis* A du code des douanes.

²⁵ Arrêté du 27 octobre 2003 relatif aux conditions requises pour concourir à l'appel à candidatures pour la mise à la consommation en France de biocarburants donnant lieu à une réduction de la taxe intérieure de consommation sur les produits pétroliers.

Articles 4.2 and 7.2 of the SCM Agreement require that a request for consultations made pursuant to paragraph 1 of those Articles shall include a statement of available evidence with regard to the existence and nature of the subsidy in question and the serious prejudice. The evidence is listed in the Annex to this request.

Italy

- (1) Legislative Decree No. 66/2005 of 21 March 2005 published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 96 of 27 April 2005²⁶ amended by Article 1 of Legislative Decree No. 55/2011 of 31 March 2011, which implements Directive 2009/30/EC, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 97 of 28 April 2011²⁷;
- (2) Legislative Decree No. 128/2005 of 30 May 2005 published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 160 of 7 December 2005, amended by Article 1, paragraph 367, of Law No. 296 of 27 December 2006, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 299 of 27 December 2006²⁸;
- (3) Decree Law No. 2/2006 of 10 January 2006, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 8 of 11 January 2006²⁹, converted into Law with amendments by Law No. 81 of 11 March 2006³⁰ published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 54 of 11 March 2006, amended by Article 1, paragraph 368, of Law No. 296/2006 of 27 December 2006, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 299 of 27 December 2006³¹, and by Article 33 of Legislative Decree 28/2011 of 3 March 2011, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 71 of 28 March 2011³²;
- (4) Interministerial Decree No. 100 of 23 April 2008, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 131 of 6 June 2008³³;
- (5) Interministerial Decree No. 110 of 29 April 2008, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 142 of 19 June 2008³⁴, amended by the Interministerial Decree of 13 February 2013, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 54 of 5 March 2013³⁵;

²⁶ Decreto Legislativo 21 marzo 2005, n. 66, di attuazione della direttiva 2003/17/CE relativa alla qualità della benzina e del combustibile diesel.

²⁷ Decreto Legislativo 31 marzo 2011, n. 55, di attuazione della direttiva 2009/30/CE, che modifica la direttiva 98/70/CE, per quanto riguarda le specifiche relative a benzina, combustibile diesel e gasolio, nonché l'introduzione di un meccanismo inteso a controllare e ridurre le emissioni di gas a effetto serra, modifica la direttiva 1999/32/CE per quanto concerne le specifiche relative al combustibile utilizzato dalle navi adibite alla navigazione interna e abroga la direttiva 93/12/CEE.

²⁸ Legge 27 dicembre 2006, n. 296, recante "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2007)".

²⁹ Decreto-Legge 10 gennaio 2006, n. 2, recante "Interventi urgenti per i settori dell'agricoltura, dell'agroindustria, della pesca, nonché in materia di fiscalità d'impresa".

³⁰ Legge 11 marzo 2006, n. 81, di conversione in legge, con modificazioni, del decreto-legge 10 gennaio 2006, n. 2, recante interventi urgenti per i settori dell'agricoltura, dell'agroindustria, della pesca, nonché in materia di fiscalità d'impresa.

³¹ Legge 27 dicembre 2006, n. 296, recante "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2007)".

³² Decreto legislativo 3 marzo 2011, n. 28, di attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE.

³³ Decreto 23 aprile 2008, n. 100, "Regolamento recante le sanzioni amministrative per il mancato raggiungimento dell'obbligo di immissione in consumo di una quota minima di biocarburanti, ai sensi dell'articolo 2-quater, comma 2, della legge 11 marzo 2006, n. 81, così come sostituito dall'articolo 1, comma 368, della legge 27 dicembre 2006, n. 296".

³⁴ Decreto 29 aprile 2008, n. 110, "Regolamento recante criteri, condizioni e modalità per l'attuazione dell'obbligo di immissione in consumo nel territorio nazionale di una quota minima di biocarburanti, ai sensi dell'articolo 1, comma 368, punto 3, della legge n. 296/2006".

³⁵ Decreto 13 febbraio 2013, "Specifiche convenzionali di carburanti e biocarburanti".

- (6) Interministerial Decree of 25 January 2010, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 42 of 20 February 2010³⁶;
- (7) Legislative Decree No. 28/2011 of 3 March 2011, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 71 of 28 March 2011³⁷, amended and supplemented by Decree Law No. 83/2012 of 22 June 2012, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 147 of 26 June 2012³⁸, converted into Law, with amendments, by Law No. 134/2012 of 7 August 2012, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 187 of 11 August 2012³⁹;
- (8) Interministerial Decree of 23 January 2012, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 31 of 7 February 2012⁴⁰, amended by the Interministerial Decree of 11 June 2012 published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 141 of 19 June 2012⁴¹, and by the Interministerial Decree of 12 November 2012, published in *Gazzetta Ufficiale della Repubblica Italiana* No. 271 of 20 November 2012⁴²;
- (9) Interministerial Decree of 14 February 2013, published in the *Gazzetta Ufficiale della Repubblica Italiana* No. 54 of 5 March 2013⁴³;

and all amendments, revisions, replacements, implementing measures and related measures.

Some or all of these measures appear to be aimed at implementing or transposing:

- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC; and/or
- Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

These measures establish an incorporation obligation of a minimum quota of biofuels into fossil fuels used for land transportation. The percentage of biofuels that have to be mandatorily incorporated into fossil fuels is calculated annually on the basis of the total calorific value of the fuels released for consumption in the course of the preceding year. Only biofuels that comply with the sustainability requirements provided for in these measures can be taken into consideration.

Compliance with the incorporation obligation is monitored by means of certificates of release for consumption of biofuels that are issued by the Ministry of Agriculture, Food and Forestry. Each certificate corresponds to the release for consumption of 10 gigacalories. Those parties that

³⁶ Decreto 25 gennaio 2010, recante "Modifica della quota minima di immissione in consumo di biocarburanti ed altri carburanti rinnovabili".

³⁷ Decreto legislativo 3 marzo 2011, n. 28, di attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE.

³⁸ Decreto-legge 22 giugno 2012, n. 83, recante "Misure urgenti per la crescita del Paese".

³⁹ Legge 7 agosto 2012, n. 134, di conversione in legge, con modificazioni, del decreto-legge 22 giugno 2012, n. 83, recante misure urgenti per la crescita del Paese.

⁴⁰ Decreto 23 gennaio 2012, recante il "Sistema nazionale di certificazione per biocarburanti e bioliquidi".

⁴¹ Decreto 11 giugno 2012, recante "Modifiche al decreto 23 gennaio 2012, recante il Sistema nazionale di certificazione per i biocarburanti e i bioliquidi".

⁴² Decreto 12 novembre 2012, recante "Ulteriori modifiche ed integrazioni al decreto 23 gennaio 2012, recante il Sistema nazionale di certificazione per biocarburanti e bioliquidi".

⁴³ Decreto 14 febbraio 2013, recante il "Sistema nazionale di premialità in materia di obbligo di immissione in consumo di biocarburanti".

are bound by the obligation of incorporation must have a sufficient number of certificates to show compliance with this obligation.

Biofuels produced in the EU and obtained from raw materials cultivated in the territory of the EU or from waste or byproducts produced in the EU, enjoy a fictitious increase of 20% of their energy contribution. This means that, in comparison with other biofuels, an amount corresponding to only 80% of the calorific value otherwise required is sufficient to obtain the same amount of certificates.

Furthermore, biofuels produced outside of the EU can be considered for compliance with the incorporation obligation only if there is an import licence for each shipment. The granting of the licence is contingent upon the presentation of a number of documents. This causes additional administrative burdens making the use of these biofuels less favourable.

Argentina considers that these measures are inconsistent with, *inter alia*, the following obligations:

- Article III:4 of the GATT 1994 because the measures appear to be laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution and use of these products, and because they appear to result in a less favourable treatment accorded to biodiesel from Argentina than that accorded to biodiesel of national origin.
- Article III:5 of the GATT 1994 because the measures appear to be an internal quantitative regulation relating to the mixture, processing or use of certain products in specified amounts or proportions which requires that any specified amount or proportion of any product which is the subject of these measures must be supplied from domestic sources.
- Article 2.1 and 2.2 of the TRIMs Agreement, read alone or in conjunction with Article 1(a) of the Illustrative List annexed to the Agreement because the measures appear to be investment measures related to trade in goods which are inconsistent with Article III of the GATT 1994.

Poland

- (1) Law of 25 August 2006, published in the *Dziennik Urzędowy Rzeczypospolitej Polskiej* No. 169 of 25 September 2006⁴⁴;
- (2) Regulation of the Council of Ministers of 15 June 2007 on national objectives for years 2008 - 2013, published in the *Dziennik Urzędowy Rzeczypospolitej Polskiej* No. 110 of 25 June 2007⁴⁵;
- (3) Law of 27 May 2011 which amends the law on monitoring and control of the quality of fuels of 27 May 2011, published in the *Dziennik Urzędowy Rzeczypospolitej Polskiej* No. 153 of 26 July 2011⁴⁶;

and all amendments, revisions, replacements, implementing measures and related measures.

According to these rules, companies or individuals that market fuels for land transportation are required to incorporate a minimum percentage of biofuels in the total volume of marketed fuels. This minimum percentage is known as the "national indicative target" and is currently set at 7.10%. The percentage is calculated on the basis of the calorific value of the fuels.

⁴⁴ Ustawa z dnia 25 sierpnia 2006 r. o biokomponentach i biopaliwach ciekłych.

⁴⁵ Rozporządzenie Rady Ministrów z dnia 15 czerwca 2007 r. w sprawie Narodowych Celów Wskaźnikowych na lata 2008-2013.

⁴⁶ Ustawa z dnia 27 maja 2011 r. o zmianie ustawy o systemie monitorowania i kontrolowania jakości paliw oraz niektórych innych ustaw.

The rules provide that the aforementioned percentage is reduced by a factor, which is currently 15%, when persons subject to the requirement provide evidence of the use of at least 70% of biodiesel obtained from raw materials grown in the territory of the Member States of the EU or of the European Free Trade Association (EFTA).

Argentina considers that these measures are inconsistent with, *inter alia*, the following obligations:

- Article I:1 of the GATT 1994 as they appear to grant an advantage, favour, privilege or immunity to products originating in other Members without according them immediately and unconditionally to the like product originating in the territory of Argentina;
- Article III:4 of the GATT 1994 because the measures appear to be laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution and use of these products, and because they result in a less favourable treatment accorded to biodiesel from Argentina than that accorded to biodiesel of national origin;
- Article 2.1 and 2.2 of the TRIMs Agreement, read alone or in conjunction with Article 1(a) of the Illustrative List annexed to the Agreement because the measures appear to be investment measures related to trade in goods which are inconsistent with Article III of the GATT 1994.

Argentina reserves the right to include rules related to, amending or expanding those referred to in both Part A and Part B of the present request for consultations, as well as to increase the claims relating thereto, in the course of the consultations.

Argentina awaits the response of the European Union and its Member States to this request and expresses its readiness to coordinate a mutually convenient date and place for the consultations.

ANNEX

Statement of available evidence

Belgium

- (1) [*Decisión de la Comisión Europea de 23 de diciembre de 2005, N 334 / 2005 - Taux d'accise réduit en faveur des biocarburants*](#) (published in the Official Journal of the European Communities of 10 February 2006).
- (2) [*Senado de Bélgica, Bulletin des questions et réponses, 3-87, Session 2006-2007, Question n°3-7207 posée par M. Cornil le 21 février 2007 au Vice-premier ministre et ministre des Finances.*](#)
- (3) ValBiom – [*Valorisation de la biomasse asbl, Biocarburants, maximisons les bénéfices, 2007.*](#)
- (4) Center for Renewable Energy Sources and Saving, Biodiesel Chains - "Promoting favourable conditions to establish biodiesel market actions"; [*Fact sheet - The biodiesel market in Belgium.*](#)
- (5) [*National Action Plan for Renewable Energy*](#), November 2010.
- (6) Press release of the Council of Ministers, [*Validation annuelle des agréments accordés aux unités de production de biocarburants*](#), 3 May 2013.
- (7) Law of 10 June 2006 concerning biofuels⁴⁷, published in the *Moniteur Belge* of 16 June 2006, amended by the Law of 24 December 2012 amending Article 419 of the Programme Law of 27 December 2004 and Article 4 of the Law of 10 June 2006⁴⁸, published in the *Moniteur Belge* of 28 December 2012.
- (8) Programme Law of 27 December 2004⁴⁹, published in the *Moniteur Belge* of 31 December 2004, amended by the Law of 24 December 2012 amending Article 419 of the Programme Law of 27 December 2004 and Article 4 of the Law of 10 June 2006, published in the *Moniteur Belge* of 28 December 2012.

France

- (1) [*Public report of the Court of Auditors on biofuel support policy*](#), published in January 2012.
- (2) Europétrole, le portail de l'industrie du pétrole; [*Biocarburant.*](#)
- (3) Contrepoints; [*Les aides à la production des biocarburants - Quelles sont les causes de l'augmentation soudaine de la production des biocarburants?*](#), 11 February 2013.
- (4) [*Table of licensed biofuel production units pursuant to Article 265 bis A of the Customs Code.*](#)
- (5) Reuters, [*French producer sees price threat to EU biodiesel*](#), 14 January 2008.
- (6) F.O. Licht's World Ethanol and Biofuels Report, [*Y/y decline in France's biodiesel imports*](#), 22 May 2012.

⁴⁷ Loi du 10 juin 2006 concernant les biocarburants.

⁴⁸ Loi du 24 décembre 2012 portant modification de l'article 419 de la loi-programme du 27 décembre 2004 et de l'article 4 de la loi du 10 juin 2006 concernant les biocarburants.

⁴⁹ Loi programme du 27 décembre 2004.

- (7) Article 265 *bis* A of the Customs Code: Implementation of a tax exemption scheme for certain biofuels, amended by Ordinance No. 2011-1105 of 14 September 2011 transposing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009, in the *Journal Officiel de la République française* of 16 September 2011.⁵⁰
 - (8) Ordinance No. 2011-1105 of 14 September 2011 implementing Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2009, published in the *Journal Officiel de la République française* of 16 September 2011.⁵¹
 - (9) Decree No. 2004-506 of 7 June 2004 on the application procedure of Article 265 *bis* A of the Customs Code, published in the *Journal Officiel de la République française* of 10 June 2004.⁵²
 - (10) Order of 27 October 2003 concerning the conditions required to participate in the call for applications for release for consumption of biofuels in France resulting in an internal consumption tax reduction on petroleum products, published in the *Journal Officiel de la République française* of 8 November 2003.⁵³
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⁵⁰ Article 265 *bis* A du code des douanes.

⁵¹ Ordonnance n° 2011-1105 du 14 septembre 2011 portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants.

⁵² Décret n° 2004-506 du 7 juin 2004 relatif aux modalités d'application de l'article 265 *bis* A du code des douanes.

⁵³ Arrêté du 27 octobre 2003 relatif aux conditions requises pour concourir à l'appel à candidatures pour la mise à la consommation en France de biocarburants donnant lieu à une réduction de la taxe intérieure de consommation sur les produits pétroliers.