



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

COMMUNICATION CONCERNING ARTICLE 21.3(B)

UNDERSTANDING BETWEEN ARGENTINA AND THE EUROPEAN UNION REGARDING
PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU

The following communication, dated 9 August 2017, from the delegation of Argentina and the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

The European Union and Argentina would like to inform the Dispute Settlement Body of the attached "Agreed Modification to the Reasonable Period of Time and Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between the European Union and Argentina with respect to the dispute *European Union – Anti-Dumping Measures on Biodiesel from Argentina* (DS473).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

**Agreed Modification to the Reasonable Period of Time and Agreed Procedures under
Articles 21 and 22 of the Dispute Settlement Understanding**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *European Union – Anti-Dumping Measures on Biodiesel from Argentina* (DS473) on 26 October 2016.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Argentina and the European Union ("EU") originally agreed that the reasonable period of time ("RPT") to implement the DSB recommendations and rulings would be 9 months and 15 days, expiring on 10 August 2017 (WT/DS473/16). With this notification, Argentina and the EU inform the DSB that they have mutually agreed to modify the RPT to expire on 28 September 2017.

In order to facilitate a satisfactory solution to the dispute, Argentina and the EU (collectively, "the parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to reduce the scope for procedural disputes and are without prejudice to either party's views on the correct interpretation of the DSU:

1. Should Argentina consider that the situation described in Article 21.5 of the DSU exists at the end of the RPT on 28 September 2017, Argentina may request consultations with the EU. The Parties agree to hold such consultations within 20 days from the date of receipt of the request. After this 20-day period has elapsed, Argentina may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which Argentina's request for the establishment of an Article 21.5 panel appears on the agenda, the EU shall accept the establishment of that panel.
3. The parties shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties shall cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date of notification of the appeal to the DSB. Further, either party may request the DSB to adopt its recommendations and rulings at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
6. Argentina may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB rules as a result of a proceeding under Article 21.5 of the DSU that a measure taken to comply does not exist or is inconsistent with a covered agreement. Argentina may also request authorization to suspend concessions or other obligations pursuant to Article 22.2 if the situation described in Article 21.5 of the DSU does not exist, including when in the course of ongoing proceedings under Article 21.5 of the DSU it becomes apparent that neither party disputes the inexistence or inconsistency with the covered agreements of measures taken to comply with the DSB recommendations and rulings. The EU shall not assert that Argentina is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to the EU's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
7. If Argentina requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, the EU shall have the right to object under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In

the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.

8. The parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
9. If any of the original panellists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), or any person serving in such proceeding becomes unavailable to serve, the parties will promptly consult on a replacement, and either party may request the Director General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panellist is unavailable to serve in either of the proceedings, or a person serving in such proceeding becomes unavailable to serve, the parties will further request that, in making this appointment, the Director General seek a person who will be available to act in both proceedings.
10. The parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
