

United Kingdom - Trade Remedies Authority. Review TS0044	Comments of the Government of Argentina to the Statement of Essential Facts. 11 December 2024.
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- 1) The Government of Argentina (“GOA”) received the Statement of Essential Facts (“SEF”) – Transition Review of Countervailing Duties on Imports of Biodiesel originating in Argentina and avails itself of the opportunity to provide certain comments and address some of its findings and conclusions.

- 2) Regarding Section B on “Summary and Findings”, particularly the “Likelihood of Subsidized imports Assessment”, the GOA notes that the review recognizes that two schemes were found to provide subsidies in the context of Article 4 of Regulation (EU) 2016/1037 (“the Basic Regulation”) of the European Union (“EU” or “the Union”) and Article 1.1 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) of the World Trade Organization (“WTO”) and that the Trade Remedies Authority (“TRA”) proffered that it would assess whether those schemes were still in place in Argentina¹.

- 3) Those two schemes or measures referred in the above-mentioned paragraph are:
 - i) Provision of Goods at LTAR²
 - ii) Revenue foregone through the application of certain exemptions provided for in Law 12962 of Santa Fé.

- 4) The TRA explains that the original investigation had found that it was not the export taxes *per se* that constituted a subsidy “but ... export taxes and other measures” which the TRA identified as:
 - “export taxes on soybeans;
 - counter-measures on producing other grains such as imposing export quotas and import ban on soybeans;

¹ Statement of Essential Facts, at paragraph 84.

² Less than Adequate Remuneration

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- subsidies to soybean producers to continue producing and selling domestically to biodiesel producers; and
- public statements to soybean producers not to stop their production but to continue selling domestically.”³

- 5) Argentina considers that a mere enumeration of measures identified during the original procedure without a reliable explanation of whether they are still valid in the context of a review five years later, and if they are, how they relate to the likelihood of recurrence of a practice, does not suffice to satisfy the standard in Part V of the SCM Agreement.
- 6) As the Government of Argentina explained in its response to the Questionnaire on 22 December 2023, the treatment and consideration of the alleged measures constituting subsidies by the European Commission (“EC” or “the Commission”) in the original investigation appear to be legally questionable⁴. First, the Commission simply described certain programs and other measures implemented by the Government of Argentina but never explained how those measures would affect the production and commercialization of soybeans and soybean oil in the context of an investigation under the SCM Agreement on biodiesel, let alone did provide any plausible explanation of those effects or a credible attempt to quantify them. The EC simply and artificially bundled programs and measures, some of them never fully implemented, many even expired years before the period of investigation, and made them fit into a constructed and self-serving narrative to support a predetermined outcome.
- 7) Even if - for the sake of the argument only- some of the regulations and programs or schemes identified were considered subsidies under the SCM Agreement, the Commission never explained how or to what extent those measures, such as Plan Belgrano or the two Compensation and Support programs enacted by the Secretary of

³ Statement of Essential Facts, at para.94.

⁴ Response 1.1, Section « B2 Subsidies » to the Questionnaire of the TRA filed by the Government of Argentina on 22 December 2023.

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Agriculture, Livestock and Fisheries (SAGyP for the acronym in Spanish), provided goods at LTAR to the biodiesel industry. All these programs were aimed at helping small farmers to partially compensate the disadvantages resulting from the lack of scale of their exploitations or the remoteness of their cultivated lands from the main trading centers.

8) That any form of support or compensation provided by a program to a farmer producing soybeans can be considered only for that, “part of a measure” aimed at providing soybeans at LTAR to the biodiesel industry is a far stretch of the argument, for -at least- the following reasons:

- a) To start with, it is important to reiterate that soybeans are not the direct input for the production of biodiesel. Soybean oil, produced and sold by around 240 plants registered in RUCA⁵ in Argentina is the raw material from which biodiesel is made. Soybean oil, if not exported can be sold to the food producing industry, or to the around 30 companies elaborating biodiesel in the country.
- b) In Argentina soybeans are produced every year by more than sixty thousand farmers cultivating an area equivalent to the territory of Belgium⁶. This broad category of “farmers” comprise small farmers working their own land, sometimes in remote areas, to big national “sowing-pool undertakings” cultivating thousands of rented land, and multinational large-scale integrated companies, that not only cultivate their own crop fields but also participate in all the segments of the oilseeds value chain (crushing, soybean meal and oil production and exportation, pellets, and biodiesel production and exportation).
- c) Only a proportion of the soybean oil produced every year, is transformed into biodiesel, of which just a minimum portion, is exported by firms which are not permitted to sell in the domestic market. These are vertically integrated companies

⁵ Single Registry of the Agri-Food Chain (RUCA for its acronym in Spanish).

⁶ About 17-18 million hectares / year spanning about 10-12 provinces. Soybean being a summer crop is also combined with other crops, meaning that farmers planting soybeans also plant other crops, like maize, for instance.

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engaged in the production and sales of the entire range of products of the oilseeds cluster, of which biodiesel is just a proportion.

- d) Decisions concerning crop cultivation and harvests, or the commercialization of the production are absolutely free in Argentina. The Government does not interfere or participate with neither. Farmers are free to plant, harvest and sell any crop of their choice, based on their own needs and preferences exclusively. There are no requirements on the use of land neither, and each farmer is free to use its own land and/or rent land for cultivation.
 - e) Contrary to what happens in Europe, in Argentina biodiesel production is only a by-product of a larger productive activity which is soymeal and soybean oil production and exportation, and not the other way around. This should not be a surprise, being Argentina's oilseeds cluster one of the most efficient and competitive in the world.
 - f) The Government of Argentina neither produce nor sell cereals, oilseeds or any derived products. The determination by the European Commission that the Government of Argentina "entrusts and directs" the provision of soybeans at LTAR is flawed and legally incorrect, as the production and provision of cereals, oilseeds, livestock or fisheries and any other related or derived product are not part of the governmental functions or activities. Consequently, the GOA could never "entrust or direct" any private body with the task of engaging in an activity not being performed by itself.
 - g) Finally, the approach followed by the European Commission is also fatally flawed and legally incorrect on another count yet: it relies necessarily on the "effects" of the measures supposedly providing subsidies, and not on their nature or design, in clear contradiction to well established WTO jurisprudence.
- 9) In spite of allegations pretending to demonstrate the contrary (attempt to make a disparate collection of actions and regulations to look as a "measure" for the purpose of establishing the existence of an alleged subsidy) the EC's analysis was focused

primarily on export taxes⁷ and the exemptions provided for in Sante Fé provincial law 12962.

- 10) Concerning the first so called “scheme” the GOA is of the view that the determination of the existence of a subsidy because of the imposition of an export tax on soybeans and soybean oil does not comply with the requirements of Article 1.1 of the SCM Agreement as it does not rely on the nature of the measure. Indeed, it is wrong to assume that every intervention by a Government constitutes a subsidy only because of the effect of that measure. That would run against the WTO SCM Agreement and well established jurisprudence too.
- 11) Like any other tribute levied on any economic activity in general, taxes on international trade (exports or imports as the case may be) might generate a restraining effect as compared to the situation that would prevail in their absence⁸. Nonetheless, this feature does not provide justification *per sé* for the imposition of countervailing duties in a manner consistent with the SCM Agreement.
- 12) It should be noted that the different aspects mentioned in the preceding paragraphs were addressed by the GOA in the sunset review currently underway in the EU. Each and every of the aspects described in subparagraphs a) to g) of paragraph 8, above, were the subject of elaboration and discussions with the EC, including during the on-site verification conducted in November 2024.
- 13) In the context of that review Argentina provided responses to over 200 questions, submitted more than 50 exhibits and two legal submissions (March and September 2024) to the European Commission. In all these instances, the GOA explained why the reality was completely different from the description provided in the Regulation

⁷ The terms “export taxes” or “export duties” are mentioned 103 times in section 3.2 “*Government’s support to the biodiesel industry including through the provision of soybeans for less than adequate remuneration*” in Regulation (EU) 2019/244, in contrast with just a handful of mentions to other alleged programs conforming the “measure” found to provide subsidies by the EC.

⁸ Taxes are not the only type of measures capable of producing such effects. The GOA refers only to taxes because these are the relevant type of measures in this case.

2019/244, and explained why none of the programs or schemes mentioned worked in the manner presumed by the Commission.

14) Concerning the review at hand, throughout the investigation conducted by the TRA the GOA indicated its disposition to provide all the information that may result necessary for the TRA to fulfil its mandate in an objective and unbiased manner. There is no doubt that the investigating authority (“IA”) enjoys some discretion in relation to the assessment of the facts and the weight accorded to the evidence submitted by the Parties in an investigation. That discretion is not unfettered however, and the IA is still bound by the obligation set forth in Article 21.4 of the SCM Agreement which demands the application of the standard of Article 12 to reviews conducted pursuant to Article 21. Therefore, a duty of due diligence is required in such a process. The imposition of a measure must be sustained with valid and proper evidence confronted with the Parties to the investigation.

15) The TRA seems to have chosen a different path, however, and instead of requiring actual information through the GOA from the agencies responsible of implementing the schemes under review, it chose to use certain secondary sources of information instead, such as United States Department of Agriculture (USDA), Organization for Economic Cooperation and Development (OECD), or TESEO⁹. For example, regarding the operation and “effects” of some of the measures identified in the original investigation the TRA resorted to reports provided by the USDA, instead of requesting that same information from the GOA¹⁰.

16) Moreover, in the present review the GOA not only did provide information and explanation about the functioning of the two schemes found to supposedly constitute subsidies under the relevant provisions of the Basic Regulation (submission of 22 December 2024), but also indicated its total disposition to offer additional information

⁹ Concerning this last name, Argentina is not aware of the existence or nature of this institution quoted by the TRA at fn 19.

¹⁰ For instance, from the Secretary of Agriculture, Livestock and Fisheries of Argentina, responsible for designing and implementing many of the measures commented by other agencies like the USDA.

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that might be necessary. Nonetheless, no additional clarifications were requested before the distribution of the SEF.

- 17) Similar comments can be offered with respect to the alleged subsidies provided for in Law 12.692 of the Province of Santa Fé. Concerning those, the TRA found that “[the] tax exemption under Provincial Law 12.692 is a subsidy (underline added) due to the revenue foregone by the GOA, and *de jure* specific to certain industries, including biodiesel”.
- 18) The TRA is wrong. First, as explained to the EC in the context of the sunset review of the original measure during the verification by governmental officials from the Province of Santa Fé, certificates of exemption granted under the authority of Law 12.962 **are neither automatic nor mandatory and always valid for 12 months only**. Consequently, they have to be renewed year by year and are only granted if two conditions are fulfilled: i) that the Authority is satisfied that the request fulfils the objectives of the law in terms of employment, investments, etc, and, ii) that there are funds available to be allocated to the exemption being requested. Those two conditions operating together mean in practice that the granting of an exemption one year does not concede a right to the beneficiary for the renewal for the subsequent years, and that even if the same conditions under which it was originally granted apply by the time of requesting a renewal, it can still be denied based on budgetary considerations. In fact, in accordance with information provided by the Provincial Revenue Authority¹¹ of the Province of Santa Fé no certificate of exemption has been granted or renewed to a biodiesel producer since 2020 to date.
- 19) The other aspect on which the TRA appears to be wrong about this scheme is in relation to the alleged specificity. The characterization of “*de jure specific to certain industries...*”¹² is misleading and legally flawed. In accordance to paragraph e) of Article 5 the scope of beneficiaries of the exemptions provided for in the law is broad enough to encompass industries “[T]hat they are in a position to produce wind

¹¹ Administración Provincial Impositiva de la Provincia de Santa Fé.

¹² SEF, paragraph 153.

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turbines, panels, solar panels, solar collectors, solar cookers and ovens, biodigesters, biogas, biofuels, oleochemical derivatives, energy converters, products to through solar dryers or any other not described above that arises from a process derived from non-conventional renewable energies that meet the conditions provided for in this law and in Law 12.503”.¹³ Hence, the provision does not aim at benefiting the biodiesel sector but a number of industries –including manufacturing industries- and should not be consider specific.

20) The arguments expressed in the preceding paragraphs reflect a preliminary assessment of some of the facts and findings¹⁴ giving support to the recommendation to be proposed. Regrettably, Argentina cannot but consider that the SEF lacks the impartiality and objectivity required from the investigating authority, as most -if not all- the findings and conclusions are one sided. In relation to the likeness of recurrence of allegedly subsidized imports, the IA has chosen to rely exclusively on the findings and conclusions of the EC in the original investigation as made evident by the almost verbatim repetition of arguments and considerations expressed by the EC in the Regulation imposing the Countervailing Duties (CVD).

21) The importance of export taxes as a source of fiscal revenue for the Government is impossible to deny. Nevertheless, as stated in the SEF, Argentina has a new administration, which initiated in December 2023, and is committed to make wide-ranging reforms oriented to the modification or elimination of regulations considered to have distortive or restraining effects on economic activities, including export taxes. Such reforms are conditioned by fiscal considerations but they are still on the agenda of the new administration nevertheless.

22) The GOA appreciates the opportunity given to provide comments to the SEF, and hopes that this could still be taken into consideration. Argentina reiterates its complete

¹³ Law 12.692 of the Province of Santa Fé para. 5.e).

¹⁴ In fact, given the lack of available time the GOA is not providing comments on Section G “Likelihood of injury assessment”, which should not be deemed to express agreement or consent to its content.

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disposition to providing further comments and/or clarifications that the TRA may deem necessary.

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