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DEPARTMENT OF COMMERCE

International Trade Administration

(C-357-821)

Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of biodiesel from the Republic of Argentina. The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Elfi Blum, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6251, or (202) 482-0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on August 28, 2017.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Final Decision Memorandum.<sup>2</sup> The Final Decision Memorandum is a public document, and is on file electronically *via* Enforcement and

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<sup>1</sup> See *Biodiesel from Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 40748 (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at <http://enforcement.trade.gov>. The signed and electronic versions of the Final Decision Memorandum are identical in content.

#### Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

#### Scope of the Investigation

The scope of the investigation covers biodiesel from the Republic of Argentina. The Department did not receive any scope comments and has not updated the scope of the investigation since the *Preliminary Determination*. For a complete description of the scope of this investigation, *see* Appendix II to this notice.

#### Final Negative Determination of Critical Circumstances

In the *Preliminary Determination*, the Department determined that critical circumstances exist with respect to LDC Argentina S.A. (LDC Argentina) and Vicentin S.A.I.C. (Vicentin), but do not exist with respect to imports from all other producers or exporters of biodiesel from Argentina.<sup>3</sup> As discussed in the Final Decision Memorandum, in accordance with section 705(a)(2) of the Tariff Act of 1930, as amended (the Act), the Department no longer finds critical circumstances with respect to imports from LDC Argentina and Vicentin. In addition, the

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<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the final Determination in the Countervailing Duty Investigation of Biodiesel from the Republic of Argentina," dated concurrently with this determination and hereby adopted by this notice (Final Decision Memorandum).

<sup>3</sup> See *Preliminary Determination* at 82 FR 40749 and PDM at 5-8.

Department continues to find that critical circumstances do not exist with respect to imports from all other producers or exporters of biodiesel from Argentina. Therefore, in accordance with section 705(a)(2) of the Act, the Department determines that critical circumstances do not exist with respect to LDC Argentina, Vicentin, and all other producers or exporters of subject merchandise.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by the interested parties in this proceeding, are discussed in the Final Decision Memorandum. A list of the issues raised by the parties and addressed by the Department in the Final Decision Memorandum is attached at Appendix I to this notice.

#### Verification

As provided in section 782(i) of the Act, during September 2017, the Department verified the subsidy information reported by the Government of Argentina (GOA), LDC Argentina, and Vicentin. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.<sup>4</sup>

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<sup>4</sup> See Memorandum, “Countervailing Duty Investigation of Biodiesel from the Republic of Argentina: Verification of the Questionnaire Responses of the Government of the Republic of Argentina,” dated September 29, 2017; Memorandum, “Countervailing Duty Investigation of Biodiesel from the Republic of Argentina: Verification of the Questionnaire Responses of LDC Argentina SA.,” dated September 29, 2017; and Memorandum, “Countervailing Duty Investigation of Biodiesel from Argentina: Verification of the Questionnaire Responses of Vicentin S.A.I.C.,” dated September 29, 2017.

### Use of Adverse Facts Available

If necessary information is not available on the record, or an interested party withholds information, fails to provide requested information in a timely manner, significantly impedes a proceeding by not providing information, or information provided cannot be verified, the Department will apply facts available, pursuant to section 776(a)(1) & (2) of the Act.

For purposes of this final determination, the Department continued to rely, in part, on facts available. For the GOA and Vicentin,<sup>5</sup> the Department is basing certain countervailability determinations and calculating subsidy rates for certain examined programs on facts otherwise available, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) and (D) of the Act. Further, because the GOA and Vicentin did not act to the best of their ability in this investigation in failing to provide necessary information requested by the Department, we determine that an adverse inference in selecting from among the facts available is warranted with respect to certain countervailable subsidy programs, pursuant to section 776(b) of the Act. The Department has therefore relied, in part, on adverse facts available (AFA) in its countervailability determination with respect to two programs, and in calculating the subsidy rate for certain Banco de la Nacion Argentina loan programs.

For further information on the Department's application of AFA, as summarized above, *see* the section titled, "Use of Facts Otherwise Available and Adverse Inferences," in the Final Decision Memorandum.

### Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, we made certain changes to the respondents' subsidy rate calculations set forth in the

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<sup>5</sup> Vicentin includes its cross-owned affiliates Oleaginosa San Lorenzo S.A. (San Lorenzo) and Los Amores S.A. (Los Amores).

*Preliminary Determination.* For a discussion of these changes, *see* the Final Decision Memorandum and the Final Calculation Memoranda.<sup>6</sup>

### All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, the Department calculated a countervailable subsidy rate for the individually investigated exporters/producers of the subject merchandise. Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, the Department also calculated an estimated “all-others” rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act provides that the “all-others” rate shall be an amount equal to the weighted-average of the countervailable subsidy rates established for individually investigated exporters and producers, excluding any rates that are zero or *de minimis* or any rates determined entirely under section 776 of the Act. In this investigation, the Department calculated individual estimated countervailable subsidy rates for LDC Argentina and Vicentin that are not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, the Department calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.<sup>7</sup>

### Final Determination

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<sup>6</sup> *See* Final Decision Memorandum; *see also* *See* Memorandum, “Countervailing Duty Investigation of Biodiesel from Argentina: Final Calculations for LDC Argentina S.A.,” dated November 6, 2017 (LDC Argentina Final Calculation Memorandum); *see also* Memorandum, “Countervailing Duty Investigation of Biodiesel from Argentina: Final Calculations for Vicentin S.A.I.C. et Alia,” dated November 6, 2017 (Vicentin Final Calculation Memorandum).

<sup>7</sup> With two respondents under examination, the Department normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged U.S. sale quantities for the merchandise under consideration. The Department then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). However, complete publicly ranged sales data are not available on the record of this investigation. Therefore, the Department has based the all-others rate on a simple average of the estimated subsidy rates calculated for the examined respondents. For a complete analysis of the data, please see the All-Others' Rate Calculation Memorandum.

The Department determines the total estimated countervailable subsidy rates to be:

<b>Company</b>	<b>Subsidy Rate</b>
LDC Argentina S.A. <sup>8</sup>	72.28 percent
Vicentin S.A.I.C. <sup>9</sup>	71.45 percent
All-Others	71.87 Percent

Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with sections 703(d) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of biodiesel from Argentina, which were entered, or withdrawn from warehouse, for consumption on or after August 28, 2017, the date of publication of the *Preliminary Determination*. Further, the Department will instruct CBP to require a cash deposit for such entries of merchandise. Because the Department finds critical circumstances no longer exist for LDC Argentina and Vicentin, the Department will terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required during the period May 30, 2017 through August 27, 2017, consistent with section 705(c)(3) of the Act.

International Trade Commission Notification

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<sup>8</sup> As discussed in the Preliminary Decision Memorandum, the Department has found the following companies to be cross-owned with LDC Argentina S.A.: LDC Semillas S.A., Semillas del Rosario S.A..

<sup>9</sup> As discussed in the Preliminary Decision Memorandum, the Department has found the following companies to be cross-owned with Vicentin S.A.I.C.: Oleaginosa San Lorenzo S.A, Los Amores S.A..

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of countervailable subsidies. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of biodiesel from Argentina no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue a CVD order directing CBP to assess, upon further instruction by the Department, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

#### Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act.

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,

performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

Dated: November 6, 2017

## Appendix I

### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope Comments
- V. Scope of the Investigation
- VI. Final Determination of Critical Circumstances
- VII. Subsidies Valuation Information
- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Analysis of Programs
- X. Discussion of the Issues

Comment 1: Whether an Export Tax on Soybeans is a Countervailable Subsidy.

Comment 2: Whether Benefits Associated with Purchases of Soybeans for LTAR are Tied to Sales of Soybean-Based Products.

Comment 3: Whether the Department Should Add a Certain Expense to the Two-Tier Benchmark.

Comment 4: Whether the Department's Benchmark Relates to the Prevailing Market Conditions in Argentina.

Comment 5: Whether the Department Should Attribute Los Amores' Alleged Subsidies to Vicentin.

Comment 6: Whether the Department Should Apply AFA Regarding Certain BNA Preferential Loans.

Comment 7: Whether the Department Has the Authority to Investigate "All Other" Subsidies

Comment 8: Whether to Apply AFA to Los Amores' Use of a Ten-Year Tax Exemption Provided by the Province of Santiago del Estero.

Comment 9: Whether the Department Correctly Calculated LDC Argentina's Benefit from the General Lagos DReI Convenio.

Comment 10: Whether "Pacto Fiscal" Confers Countervailable Benefits to LDC Argentina.

- XI. Conclusion

## **Appendix II**

### **Scope of the Investigation**

The product covered by this investigation is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. The investigation covers biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of the investigation.

Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784-80-9 (soybean oil methyl esters); 91051-34-2 (palm oil methyl esters); 91051-32-0 (palm kernel oil methyl esters); 73891-99-3 (rapeseed oil methyl esters); 61788-61-2 (tallow methyl esters); 68990-52-3 (vegetable oil methyl esters); 129828-16-6 (canola oil methyl esters); 67762-26-9 (unsaturated alkylcarboxylic acid methyl ester); or 68937-84-8 (fatty acids, C12-C18, methyl ester).

The B100 product subject to the investigation is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

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