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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-357-820, C-357-821

Biodiesel from Argentina: Initiation of Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders

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

SUMMARY: The Department of Commerce (Commerce) is initiating changed circumstances reviews (CCR) of the antidumping duty (AD) and countervailing duty (CVD) orders on biodiesel from Argentina.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace, 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.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, and April 26, 2018, Commerce published the CVD and AD orders on biodiesel from Argentina.¹ On September 21, 2018, the GOA, joined by Vicentin S.A.I.C. (Vicentin) and LDC Argentina (LDC), requested that Commerce initiate a CCR of the AD order, and the GOA requested that Commerce initiate a CCR of the CVD order, in order to adjust the

¹ See *Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders*, 83 FR 522 (January 4, 2018), corrected by *Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders*, 83 FR 3114 (January 23, 2018); see also *Biodiesel from Argentina and Indonesia: Antidumping Duty Orders*, 83 FR 18278 (April 26, 2018) (collectively, *Orders*).

cash deposit rates established in the AD and CVD investigations to reflect changes to Argentina's export tax regime.² On October 1, 2018, the National Biodiesel Board Fair Trade Coalition (petitioner) filed comments requesting that Commerce deny the GOA's request.³ On October 11, 2018, the GOA, Vicentin and LDC filed comments responding to the petitioner's October 1, 2018 comments.⁴ On October 15, 2018, the petitioner submitted information and data illustrating the improvements in the domestic industry since the imposition of the orders, and on October 23, 2018, the petitioner submitted further comments opposing the CCRs.⁵ Between September 26, 2018, and October 19, 2018, Commerce met with the GOA and the petitioner to discuss their submissions to the record.⁶

Scope of the Orders

The product covered by the *Orders* is biodiesel from Argentina. For a complete description of the scope of the *Orders*, see the appendix to this notice.

Initiation of Changed Circumstances Reviews

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d), Commerce will conduct a CCR of an AD or CVD order when it receives information concerning, or a request from an interested party which demonstrates, changed

² See GOA's Letter, "Biodiesel from Argentina: Request for Changed Circumstances Review," dated September 21, 2018 and filed on the record of A-357-820; see also GOA's Letter, "Biodiesel from Argentina: Request for Changed Circumstances Review," dated September 21, 2018 and filed on the record of C-357-821 (collectively, Requests for CCRs).

³ See Petitioner's Letter, "Biodiesel from Argentina: Petitioner's Opposition to the Government of Argentina's Requests for Changed Circumstances Reviews," dated October 1, 2018.

⁴ See GOA's Letter, "Biodiesel from Argentina: Response to Petitioners' Opposition to the Government of Argentina's Request for Changed Circumstances Review," dated October 11, 2018 (GOA's October 11, 2018 Submission).

⁵ See Petitioner's Letter, "Positive Impact of Orders from Argentina on Domestic Biodiesel Industry," dated October 15, 2018; see also Petitioner's Letter, "Biodiesel from Argentina: Petitioner's Response to Respondents' October 11, 2018 Submission," dated October 23, 2018.

⁶ See Memorandum, "AD/CVD Orders on Biodiesel from Argentina – Requests for Changes Circumstance Reviews," dated September 26, 2018; see also Memorandum, "Antidumping and Countervailing Duty Orders on Biodiesel from Argentina – Requests for Changed Circumstances Reviews: Ex Parte Meeting," dated October 4, 2018; see also Memorandum, "Antidumping and Countervailing Duty Orders on Biodiesel from Argentina – Requests for Changed Circumstances Reviews: Ex Parte Meeting," dated October 19, 2018.

circumstances sufficient to warrant such a review. However, section 751(b)(4) of the Act also provides that Commerce may not conduct a CCR of an investigation determination within 24 months of the date of the investigation determination in the absence of “good cause.”

In its request for initiation, the GOA explains that there are changed circumstances sufficient to warrant reconsideration of the AD and CVD final determinations. Regarding changed circumstances, the GOA provided information indicating that, since the *Orders*, there have been changes in the export tax regime, which was a key element in Commerce’s analysis of: (1) the soybeans for less than adequate remuneration program in the CVD investigation; and (2) the particular market situation finding concerning the cost of soybean input prices in the AD investigation.⁷ In particular, the GOA attached three legislative decrees effecting changes across its export tax regime, including changes to the export taxes applied to soybeans, soybean oil, soymeal, and biodiesel. Decrees 793/2018 and 486/2018, issued after the investigations were finalized, in May and September 2018, respectively, decreased significantly the export tax on soybeans and other commodities in the soybean value chain (*e.g.*, soybean oil, soymeal), and imposed a new biodiesel export tax. According to the decrees themselves, such changes were “necessary to continue fostering the convergence between the export tax applicable to {soybeans, soybean oil, soymeal} and that applicable to biodiesel,”⁸ and “in order to, among other objectives, implement the monetary, exchange or foreign trade policy, to stabilize internal prices and to address public financial needs.”⁹ Additionally, Decree 793/2018, in addition to decreasing the export tax on soybeans, imposes new, temporary taxes on “all products” exported

⁷ See Requests for CCRs at 2, 4; see also *Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination*, 82 FR 53477 (November 16, 2017) and accompanying Issues and Decision Memorandum (*CVD Final Determination*) and *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 8837, and accompanying Issues and Decision Memorandum (*AD Final Determination*), which discussed these aspects of the final determinations.

⁸ Decree 486/2018. See Requests for CCRs at Attachment 3.

⁹ Decree 793/2018. See Requests for CCRs at Attachment 2.

from Argentina. The decree's preamble references an underlying statutory regime, as well as the GOA's 2018 national budget, noting concerns with ensuring "fiscal convergence, an efficient tax policy and the gradual reduction of the tax burden."¹⁰ The GOA suggests that such changes indicate a revised focus on fiscal policy, and not the development of particular industries. The GOA documented that these changes are not merely theoretical or prospective but have been in full effect as of September 2018. Furthermore, the GOA submitted information to support its claim that, since the imposition of the *Orders*, Argentine exporters have effectively been unable to ship biodiesel to the United States in light of combined AD and CVD cash deposit rates.¹¹ According to the GOA, this alleged inability to ship to the United States prevents the conduct of administrative reviews through which Commerce would typically reexamine findings from investigations.¹²

Additionally, the GOA provided two correlating reasons for satisfying the "good cause" requirement pursuant to section 751(b)(4) of the Act. First, the GOA explained that the changes it has made to its export tax system, discussed above, have virtually eliminated the export tax differential among products in the soybean value chain. Specifically, prior to the issuance of the CVD order, in December 2017, products in the soybean value chain (except biodiesel) were subject to an export tax of 27 to 30 percent, while biodiesel was subject to an export tax rate of zero percent.¹³ As of September 2018, the export tax on soybean products has been reduced to 18 percent, and the export tax on biodiesel has been increased to 15 percent, reducing the export tax differential from approximately 30 percent to 3 percent.¹⁴ The GOA also noted its belief that the remaining three percent differential is offset by the Most-Favored Nation tariff of 4.6 percent

¹⁰ *Id.*

¹¹ See GOA's October 11, 2018 Submission at 8.

¹² *Id.* (citing U.S. Census Data).

¹³ See Requests for CCRs at 3-4, Attachments 1-3.

¹⁴ *Id.*

applied to U.S. biodiesel imports.¹⁵ Second, the GOA notes that the imposition of the AD and CVD rates (ranging from 60.44 percent to 86.23 percent, and 71.45 percent to 72.28 percent, respectively) has completely closed the U.S. market for Argentine biodiesel, reducing Argentina's biodiesel exports to the United States from approximately \$1.2 billion in 2016 to zero in 2018.¹⁶ The GOA notes the combined AD and CVD rates total at least 130 percent, depending on the producer and exporter.

In considering the GOA's request for a CCR, we note that Commerce has initiated CCRs to address a wide variety of issues, some of which otherwise may or may not be addressed in the context of an annual administrative review.¹⁷ Here, although the issues raised by the GOA may be considered in the context of an administrative review under section 751(a) of the Act, there have been no shipments which could be the subject of an administrative review. Thus, under Commerce's normal administrative review procedures, we otherwise would not have an opportunity to review the substantial changes that the GOA has made to its export tax regime, which formed the basis for certain of our findings in the *AD Final Determination* and *CVD Final Determination*. These changes, as discussed in greater detail above, include legislative decrees that significantly reduced the export tax on soybeans and other soybean products which were examined in the underlying investigations, and imposed new export taxes on biodiesel and other goods which were not previously in place at the time of the investigations. In light of the above,

¹⁵ See Requests for CCRs at 4.

¹⁶ See GOA's October 11, 2018 Submission at 8.

¹⁷ See, e.g., *Aluminum Extrusions from the People's Republic of China: Initiation and Preliminary Results of Expedited Changed Circumstances Review*, 83 FR 34548 (July 20, 2018) (finding sufficient information to initiate a CCR to recalculate certain cash deposit rates); *Certain Steel Nails From Malaysia: Initiation of Antidumping Duty Changed Circumstances Review*, 80 FR 71772 (Nov. 17, 2015) (finding sufficient information and "good cause" to initiate a CCR to evaluate whether a company was properly utilizing the correct cash deposit rate); *Initiation of Changed Circumstances Countervailing Duty Administrative Reviews; Pure Magnesium and Alloy Magnesium From Canada*, 57 FR 41473 (Sept. 10, 1992) (finding sufficient information and "good cause" to initiate a CCR to evaluate changes to the major subsidy program at issue in the underlying investigation).

including the information submitted by the GOA regarding a complete cessation of shipments of biodiesel from Argentina to the United States and the unique nature of the substantial changes to the GOA's export tax regime since the imposition of the *Orders*, we find that there is sufficient information and "good cause" to initiate CCRs.

Therefore, we are initiating CCRs pursuant to sections 751(b)(1) and (4) of the Act and 19 CFR 351.216(c) and (d) to assess the impacts of the GOA's revised export tax regime on the *AD Final Determination* and *CVD Final Determination*, as discussed above.

We intend to publish in the *Federal Register* a notice of preliminary results of the AD and CVD CCRs, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on these results. Pursuant to 19 CFR 351.221(b)(4), interested parties will have an opportunity to comment on the preliminary results. We will issue the final results of review no later than 270 days after publication of this notice of initiation in accordance with 19 CFR 351.216(e).

This notice is published in accordance with section 751(b)(1) and 777(i) of the Act and 19 CFR 351.221(c)(3) of the Act.

Dated: November 5, 2018

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

APPENDIX

Scope of the Orders

The product covered by these orders 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. These orders cover 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 these order.

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 orders 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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