

EBB

European Biodiesel Board

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Ref: 236/TRA/09

Brussels, March 12th 2009

BACKGROUND NOTE

SUBSIDISED AND DUMPED BIODIESEL FROM THE USA (“B99”) MECHANISM AND IMPACT FOR EU INDUSTRY

1. BACKGROUND

Since early 2007, the European biodiesel industry has to defend its strong global leadership and competitiveness (in 2007, the EU produced 68% of the world-wide biodiesel output) against a **major commercial threat coming from the United States of America**.

The European biodiesel industry has indeed been hit by unfairly subsidised and dumped US biodiesel exports. As a result of the combined subsidisation and dumping, **US biodiesel is sold on the EU market at a very high discount therefore injuriously suppressing sales prices and margins of EU biodiesel producers**.

This unfair trade has created significant injury to the EU industry, **leading an important number of companies to bankruptcy. Many more had to temporarily stop production and are on the verge of closing down their facilities**.

This note summarily presents the mechanism of US biodiesel subsidies and dumping practices, as well as their detrimental impact on the EU market.

2. THE US BIODIESEL SUBSIDIES AS A MAJOR DISTORTION OF INTERNATIONAL TRADE

2.1. The mechanism of the “blender’s credits”

There are at least thirty U.S. Federal Government programs designed to increase the production and use of biodiesel and the infrastructure for biodiesel distribution. Amongst those incentives, the diesel fuel **excise tax credit and income tax credit granted to biodiesel mixtures** clearly accounts for the great majority of benefit which has been provided to the U.S. biodiesel industry.

In October 2004, U.S. President Georges W. Bush signed into law a biodiesel tax incentive – called the *Volumetric Biodiesel Credit* - as part of the American JOBS Creation Act (H.R.4520). The incentive is a tax credit against federal excise and income taxes.

The amount of the income tax credit allowed to a taxpayer must be reduced by the amount of the excise tax credit or payment the taxpayer receives for the same year. Therefore, the interaction of both mechanisms ensures a **benefit of \$1/gallon of biodiesel blended with conventional diesel**. This is usually referred to as **the “blender’s credit”**.

The Joint Committee on Taxation of the United States Congress estimates that the biodiesel excise tax credit costs the US Treasury \$50 million per year and the biodiesel income tax credit costs the US Treasury \$100 million per year, in fiscal years 2007 and 2008.¹

Both the Excise Tax Credit and the Income Tax Credit have been designed to encourage the blending of biodiesel with mineral diesel. Both subsidisation mechanisms **apply without limitation in terms of biodiesel content**. US biodiesel producers can therefore be subsidised up to \$264 per m³ (i.e.

¹ Joint Committee on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 2007-2011, Sept. 24, 2007, JCS-3-07, at 25, 36.

approximately **\$300 per tonne**) only by adding a “drop” of mineral diesel to biodiesel when releasing a “B99,9” blend for consumption.

Most importantly, the **benefit of the subsidy is not limited to biodiesel produced in the US for consumption in the US but is also available upon export**. As a result, a B99 “blend” can be exported to Europe where it is also eligible to existing national schemes supporting biodiesel production.

2.2 The devastating effects of US unfair biodiesel exports

Even though the original intent of the US biodiesel tax credits was mainly to enhance domestic energy security by adding fuel to the U.S. energy supply, the 2004 legislation does not restrict the benefit of the tax break to biodiesel released for consumption on the US territory. On the contrary, **the biodiesel tax credits are also applied to biodiesel intended for export**.

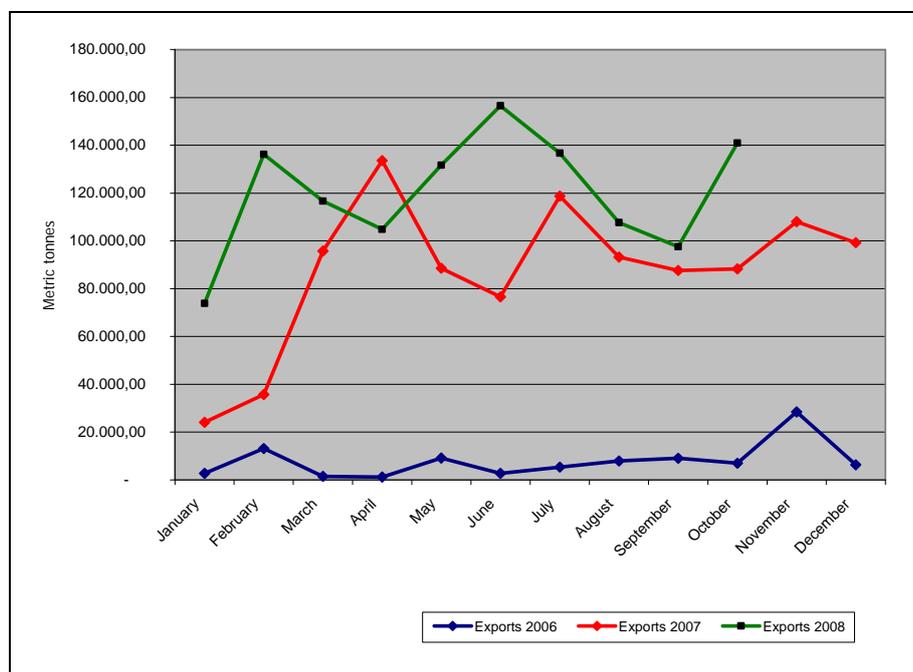
Since the benefit of the “blender’s credit” is not restricted to biodiesel consumed on the US territory, the 2004 support provisions resulted in a massive surge of US biodiesel exports to the EU, representing a major and unfair competition for the domestic industry.

In most cases US biodiesel is sold in the European market with a substantial discount and very often **at a lower price than the main vegetable oil raw material used for its manufacturing**.

3. THE MAGNITUDE AND IMPACT OF US BIODIESEL EXPORT TO EU

Since April, EBB is closely monitoring the volumes of US biodiesel exported towards the EU. It is estimated that **in 2007, more than 1 million tonnes** of US biodiesel have entered the EU, compared to only 90 000-100 000 tonnes the previous year. Last year, there has been a further surge in B99 exported to the EU, with an estimate of **1,5 million tonnes B99 exported to the EU in 2008**.

The steep increase of US B99 exports to EU has led to the sharp erosion of EU biodiesel markets (Provisional data for 2008)

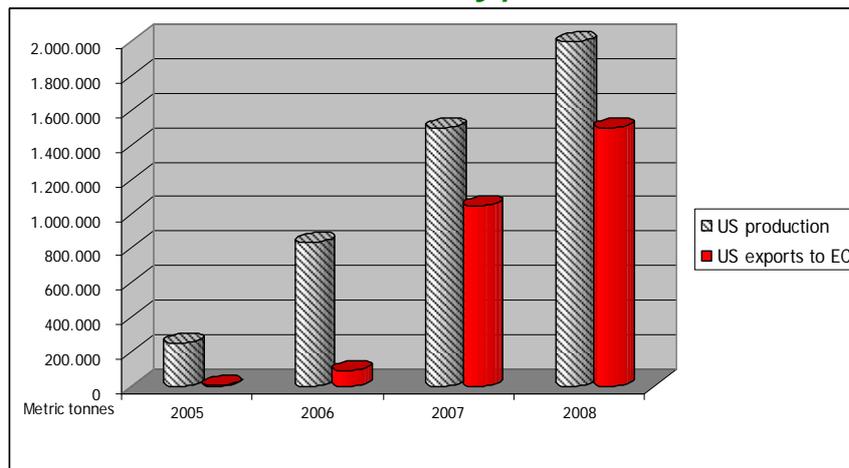


On top of the US-produced “B99” biodiesel, which makes up the bulk of the volumes entering the EU market, a triangular trade referred to as “splash and dash” also developed, whereby foreign producers (Indonesian, Malaysian, Argentinean) were taking advantage of the US biodiesel credit before shipping their commodities to Europe. **The “splash and dash” scheme however never represented more than a very marginal share of the total B99 volumes entering the EU** and it was eventually removed by the US Congress in October 2008. **Therefore, the core of the problem was and remains biodiesel produced in the US from US raw material.**

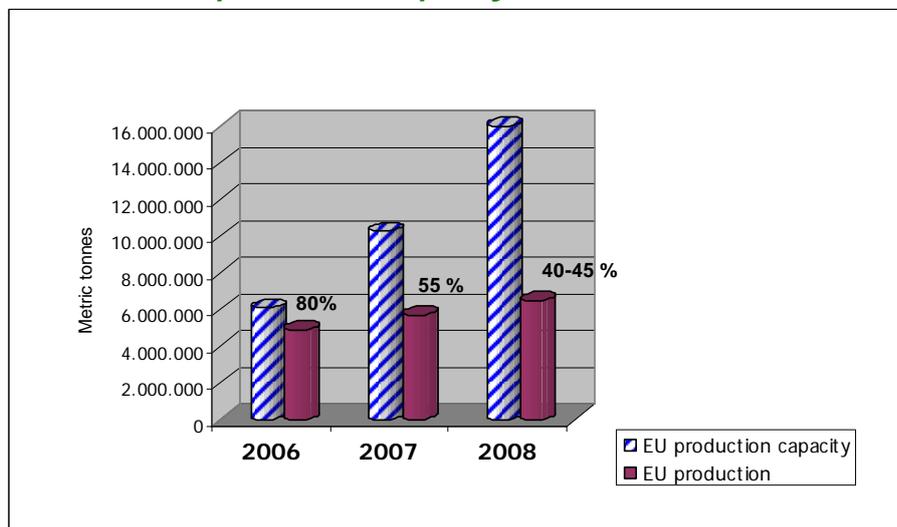
More generally, it should be underlined that all attempts by the US Congress to restrict the benefit of the \$1/gallon subsidy to biodiesel produced and consumed on the US territory have failed so far. Since mid-2007, under the combined effect of EU diplomatic pressure and tight US budget requirements, the US Congress made several attempts to bring a sustainable solution to the plight of B99. This has culminated in October 2008 with the retroactive closure of the “splash and dash” loophole and the parallel extension beyond 2008 of the unfair subsidisation scheme for US-produced biodiesel. **The US Congress therefore left the core of the problem unsolved, i.e. US-produced biodiesel exported to EU.**

As a result, the **US biodiesel market can be depicted as being fully export-driven. Even US newspapers acknowledge that around 80 % of US made biodiesel is exported out of the country, predominantly to Europe.** Considering the rapid build up of production capacity occurring in the U.S, this explains the surge of B99 exports to Europe since 2007, as illustrated below.

US biodiesel manufacturers mostly produce for the EU market



Unfair B99 exports to the EU cause most of the European biodiesel production capacity to stand idle



This dramatic situation has prompted a vigorous legal action from the side of EBB, the European Federation of Biodiesel Producers, which gathers 72 European companies and associations accounting for around 80% of EU biodiesel production. **Last April, EBB lodged a joint anti-subsidy and anti-dumping complaint with the European Commission trade services (DG Trade) against unfairly traded US biodiesel** and is pursuing by all means the prompt re-establishment of fair international trade in biodiesel.
