# **EBB**European Biodiesel Board

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#### 276/TRA/07

Brussels, 19/3/2007

Mr. Peter MANDELSON Commissioner for Trade European Commission B-1049 Brussels BELGIUM

CC: Andris PIEBALGS, Commissioner for Energy
Mariann FISCHER BOEL, Commissioner for Agriculture and Rural Development

## Re: International trade of biodiesel – unfair competition from "B99" subsidised exports from US and Argentinean Differential Export Taxes (DETs)

Dear Sir,

Biodiesel is becoming a world-wide reality and increasing quantities of biodiesel are exchanged in the world market. The EU biodiesel industry, represented by the EBB, is a highly competitive sector and holds today a strong leadership at international level.

The bases for an international trade of biodiesel are now being set. This should be done in a fair and structured approach. Some move in this sense is already being done by the World Custom Organisation (WCO) which is working on the definition of a precise and independent custom classification of biodiesel, sofar imported under custom code 38249098.

Unfortunately, however, unfair trade practices seem to dominate the first international exchanges of biodiesel. More specifically EBB is very concerned with unfair competition from highly subsidised biodiesel exports from the US entering the EU market as "B99" blends. Argentinean DETs represent a supplementary matter of concern.

### US "B99" export subsidies

Increasingly important quantities of biodiesel are being imported in the EU from the United States. Such imports are entering in the EU market under the form of a blend of 99,9% biodiesel and 0,1% (or even less) mineral diesel ("B99,9").

At present, in the frame of US Federal measures¹ adopted in 2004 to promote biodiesel, US biodiesel producers are eligible for a subsidy of 1 US dollar per every gallon (1US gallon = 3,8 litres) of biodiesel blended with mineral diesel. This means that, in practice, biodiesel can be subsidised up to 263 US\$ per cubic meter (i.e. approximately 0,20€ per litre) only by adding a "drop" of mineral diesel to biodiesel. A "B99,9" blend (if it can still be considered as a "blend") in fact gets the maximum subsidy for blending and is then ready to be exported to Europe in order to fully benefit from European subsidy schemes.

This system clearly represents an unfair trade measure that urgently needs to be reviewed and eliminated – at least in its unfair trade aspects - by the US government. This also in the light of the fact that triangular trade is starting with biodiesel producers or traders from third countries (Malaysia, Brazil, etc.) shipping biodiesel to US harbours to be "blended" with a 1% (but even a 0,001% would be enough) for exporting to Europe afterwards, in a sort of "touch and go" trade.

In January 2007 the amount of B99 biodiesel imported in the EU has risen to around 30.000 tonnes/month. In most cases B99 blends are then sold in the European market as "pure biodiesel". If B99 import acceleration continues throughout the year it may lead to over half a million tonnes of B99 imports by the end of 2007.

In most EU countries <u>EBB member companies are experiencing dumping competition from B99 blends which are offered in the market as pure biodiesel</u> with a substantial discount in some cases going over 100-150€/tonne. <u>This competition is price-setting and is progressively disrupting the margins of EU biodiesel producers</u>, putting out of business many EU biodiesel producers who are already confronting important market difficulties because of the late implementation of EU biofuels legislations in many EU countries and subsequent industrial overcapacities. Because of unfair subsidisation in most cases B99 biodiesel is offered on the European market by US exporters at the same price of the raw materials (rapeseed oil) purchased by the EU industry for producing biodiesel. Of course in these conditions is impossible to compete.

US "B99" exports also result in unfair competition on the world market and make it difficult not only for EU producers but also for other countries and notably developing countries to obtain an income from the development of local biodiesel projects.

The EBB already questioned the National Biodiesel Board (NBB) - US Federation of biodiesel producers - requesting the elimination of B99 subsidised exports, but in an official reply NBB clearly indicated that "NBB supports the continued applicability of the U.S. tax credits for U.S. produced biodiesel that is exported".

In this frame the EU biodiesel industry urges the European Commission to take any action necessary to counter and then eliminate unfair "B99" subsidised exports from the US. This should include urgent measures such as a countervailing duty to balance the injury caused to European biodiesel firms. The US trade practice in fact is clearly breaching WTO rules and represents a serious threat to the fair trade of biofuels.

## Argentinean DETs applying to oilseeds products and biodiesel

Argentinean DETs are based on a different mechanism, but still represent a distortion for the global trade of biodiesel. Argentina imposes a 27.5% export tax on soybeans, a 24% percent tax on meal and oil, but only a 5% tax for biodiesel exports. Such an export tax is even reduced to 0% in case a biodiesel blend is exported (creating a supplementary 5% ad-value incentive to export a sort of "Argentinean B99" blend).

<sup>&</sup>lt;sup>1</sup> In October 2004, President Bush signed into law a biodiesel tax incentive as part of the US *JOBS Creation Act*. The incentive, which was due to expire on December 31<sup>st</sup> 2006, is a federal excise tax credit amounting to one penny per percent of biodiesel blended with petroleum diesel. In August 2005, as part of the Energy Bill, the federal excise tax was extended until 2008. It is interesting to note that the *JOBS Creation Act* was approved in order to replace another measure withdrawn because of a WTO condemnation for illegal export subsidies.

As a result DETs create a 19% to 24% incentive given to the local Argentinean biodiesel industry for processing vegetable oils into biodiesel, for the sole purpose of exporting them. It is worth mentioning that last January Argentina increased the export taxes levied on seeds and oils<sup>2</sup>, leaving unchanged the tax on biodiesel, thus increasing by 4% the distorting effects of the measure.

This system provides a financial benefit in the form of substantially lower export tax rate on processed products (biodiesel) and creates market distortions that should be questioned urgently. Although there is still little biodiesel production today in Argentina, many large size plants are already under construction and will be operational soon. Such investment is made on the basis of trade-distorting measures that cannot be accepted by the international community.

The WTO Hong Kong commitment for eliminating all forms of export subsidies provides a legal basis for eliminating Differential Export Taxes (DETs). The difference in the tax rates creates in fact an export subsidy for processed products and notably for biodiesel. As a result EBB suggests the inclusion of DETs in the WTO Export Competition pillar as an export subsidy that should be subject to elimination in the Doha Round.

We thank you in advance for taking into account the concerns expressed by our industry. Should you need any further information or clarification on the issues described above, please do not hesitate to contact us.

Your sincerely,

Moritz GAEDE EBB President Raffaello GAROFALO EBB Secretary General

The EU produced last year around 4,5 million tonnes of biodiesel, accounting for approximately 70% of the world biodiesel production. The second world producer, the US, produced 1 million tonnes of biodiesel in 2006. The other emerging producers are Brazil, Argentina, Malaysia and Indonesia. The four latter countries enjoy a free access to the EU biodiesel market since they are part of the GSP system (which should be questioned on the basis of unfair trade concern for Argentina and, among others, sustainability issues for the other countries).

The European Biodiesel Board, also known as EBB, is a non-profit organisation established in January 1997. EBB represents 51 companies producing biodiesel in the EU. EBB member companies account for more than 80% of the European production.

<sup>&</sup>lt;sup>2</sup> DETs levied on seeds and vegetable oils used to be of 23,5 and 20% respectively until January 2007. Last January 11<sup>th</sup>, 2007 they were raised by 4% by Resolution 10/2007 of the Argentinean *Ministerio de Economía y Producción*. This resolution did not change the export tax levied on biodiesel, which remained unchanged to 5% - and 0% for blends - thus increasing the gap and the corresponding export subsidy.