



2025/835

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COMMISSION IMPLEMENTING REGULATION (EU) 2025/835

of 5 May 2025

imposing a definitive countervailing duty on imports of biodiesel originating in Argentina following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) By Commission Implementing Regulation (EU) 2019/244 ⁽²⁾, the European Commission ('the Commission') imposed countervailing duties on imports of biodiesel originating in Argentina ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'
- (2) The countervailing duties currently in force are at rates ranging between 25 % and 33,4 % on imports from the sampled exporting producers, 28,2 % on the non-sampled cooperating companies and a duty rate of 33,4 % on all other companies from Argentina. In February 2019, the Commission also accepted undertakings offered by the Argentinian exporters ⁽³⁾ consisting of an annual duty-free quota for biodiesel at a minimum price based on Argentina's official soybean oil price, plus production costs and freight.
- (3) Imports of biodiesel are currently subject to anti-dumping measures when originating in the People's Republic of China ('China') ⁽⁴⁾ or in the United States of America ('USA') ⁽⁵⁾ and to countervailing measures when originating in Indonesia ⁽⁶⁾ or the USA ⁽⁷⁾.

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁸⁾, the Commission received a request for a review pursuant to Article 18 of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55, ELI: <http://data.europa.eu/eli/reg/2016/1037/oj>.

⁽²⁾ Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2019/244/oj).

⁽³⁾ Commission Implementing Decision (EU) 2019/245 of 11 February 2019 accepting undertaking offers following the imposition of definitive countervailing duties on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 71, ELI: http://data.europa.eu/eli/dec_impl/2019/245/oj).

⁽⁴⁾ Commission Implementing Regulation (EU) 2025/261 of 10 February 2025 imposing a definitive anti-dumping duty on imports of biodiesel originating in the People's Republic of China (OJ L, 2025/261, 11.2.2025, ELI: http://data.europa.eu/eli/reg_impl/2025/261/oj).

⁽⁵⁾ Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 34, ELI: http://data.europa.eu/eli/reg_impl/2021/1266/oj).

⁽⁶⁾ Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia (OJ L 317, 9.12.2019, p. 42, ELI: http://data.europa.eu/eli/reg_impl/2019/2092/oj).

⁽⁷⁾ Commission Implementing Regulation (EU) 2021/1267 of 29 July 2021 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 62, ELI: http://data.europa.eu/eli/reg_impl/2021/1267/oj).

⁽⁸⁾ Notice of the impending expiry of certain anti-subsidy measures (OJ C 183, 25.5.2023, p. 2).

- (5) The request for review was submitted on 10 November 2023 by the European Biodiesel Board ('the applicant' or 'EBB') on behalf of the Union industry of biodiesel in the sense of Article 10(6) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of subsidisation and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (6) Prior to the initiation of the expiry review, the Commission notified the Government of Argentina ('GOA') ⁽⁹⁾ that it had received a properly documented request, and invited the GOA for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 5 February 2024. However, no mutually agreed solution could be reached with the GOA. In view of Article 18(2) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission's assessment on all the evidence at its disposal and on the basis of the investigation was initiated. That memorandum can be found in the file for inspection by interested parties. Comments made by the GOA on that occasion were summarised and addressed in the memorandum.
- (7) Having determined, after consulting the Committee established by Article 15(1) of Regulation (EU) 2016/1036 ⁽¹⁰⁾, that sufficient evidence existed for the initiation of an expiry review, on 9 February 2024 the Commission initiated an expiry review with regard to imports into the Union of biodiesel originating in Argentina ('the country concerned') on the basis of Article 18 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽¹¹⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (8) The investigation of continuation of subsidisation covered the period from 1 October 2022 to 30 September 2023 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation of injury covered the period from 1 January 2020 to the end of the review investigation period ('the period considered').

1.5. Interested parties

- (9) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known producers in Argentina and the authorities of Argentina, known importers, suppliers and users as well as associations known to be concerned about the initiation of the expiry and invited them to participate.
- (10) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Comments on initiation

- (11) In a submission dated 15 March 2024, the Argentine Chamber of Biofuels ('CARBIO') contested the initiation on the grounds that the injury analysis in the request failed to consider other relevant factors that might result in injury. CARBIO also claimed that the request was insufficiently substantiated, namely as regards the assumption that, if the countervailing measures would be allowed to lapse, imports of biodiesel from Argentina would surge and cause injury to the Union industry.

⁽⁹⁾ The term 'GOA' is used in this Regulation in a broad sense, including all Ministries, Departments, Agencies and Administrations at central, regional or local level.

⁽¹⁰⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (codification) (OJ L 176, 30.6.2016, p. 21).

⁽¹¹⁾ Notice of initiation of an expiry review of the anti-subsidy measures applicable to imports of biodiesel originating in Argentina (OJ C, C/2024/1355, 9.2.2024, ELI: <http://data.europa.eu/eli/C/2024/1355/oj>).

- (12) The Commission considered that the request contained sufficient evidence to demonstrate that the expiry of the measures would be likely to result in continuation of subsidisation and recurrence of injury to the Union industry. It is not excluded that the request contains some gaps or elements which are not reasonably available to the Union industry, but this situation cannot undermine the overall conclusion that there was sufficient evidence meriting further investigation. Also, evidentiary standards are not the same for initiation and other stages of the investigation. The Commission dismissed CARBIO's claims.
- (13) In their comments on initiation, CARBIO and the GOA submitted that relevant legislative changes had taken place since the original investigation, notably with respect to the tax exemptions in the province of Santa Fe and to the biodiesel domestic mandate. Furthermore, they submitted that other legislative changes were expected to take place in the course of the investigation.
- (14) The Commission took these information into account in the analysis of the subsidy schemes concerned in recitals (35) to (51) and (271) to (283) and in the likelihood analysis in recitals (323) to (330).

1.7. **Sampling**

- (15) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.7.1. *Sampling of Union producers*

- (16) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the representativity in terms of volume of production and sales of the like product in the Union between 1 October 2022 and 30 September 2023. Account was also taken of the product mix within the sample. This sample consisted of four Union producers. In light of the information available at initiation stage, the sampled Union producers accounted for approximately 15 % of the estimated total volume of production of the like product in the Union and 24 % of the Union sales of the producers that replied to the inquiry. In accordance with Article 27(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No parties provided any comments. The sample of Union producers was considered representative of the Union industry.

1.7.2. *Sampling of importers*

- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (18) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

1.7.3. *Sampling of exporting producers in Argentina*

- (19) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in Argentina to provide the information specified in the Notice of Initiation. In addition, the Commission asked the mission of Argentina to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (20) Seven exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of three exporting producers, belonging to two groups, on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The sampled groups of exporting producers accounted for 68 % of the total import volume into the Union from Argentina reported in Eurostat in the review investigation period. In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No comments were made.

1.8. Replies to the questionnaire and verification

- (21) The Commission sent questionnaires to the GOA, the sampled exporting producers, the sampled Union producers, an unrelated importer, and the applicant. These questionnaires were made available online ⁽¹²⁾ on the day of initiation, except for those intended for the GOA and the applicant, which were made available in the file for inspection by interested parties.
- (22) Questionnaire replies were received from the GOA, the sampled exporting producers, the sampled Union producers, an unrelated importer and the applicant.
- (23) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation of subsidisation and injury and of the Union interest.
- (24) Verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the GOA and of the following companies:

Union producers

- Chevron, Amsterdam, the Netherlands,
- Masol Iberia Biofuel, S.L.U., El Grao (Castellón) and Barcelona, Spain,
- Raffineria di Gela, Gela and Rome, Italy,
- Saipol, Paris, France;

Applicant

- European Biodiesel Board (EBB), Brussels, Belgium;

Exporting producers in Argentina

- Renova Group:
 - Viterra Argentina S.A., Villa Adelina
 - Molinos Agro S.A., Victoria
- LDC Argentina S.A., Buenos Aires.

2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under review

- (25) The product under review is the same as in the original investigation, namely fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend ('the product under review'), currently falling under CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 33), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 33), ex 1518 00 95 (TARIC code 1518 00 95 21), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 91 33), ex 2710 19 42 (TARIC codes 2710 19 42 21 and 2710 19 42 29), ex 2710 19 44 (TARIC codes 2710 19 44 21, 2710 19 44 29 and 2710 19 44 33), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 33), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 33), 2710 20 11, 2710 20 16, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 14 and 3824 99 92 17), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 33) ⁽¹³⁾.

⁽¹²⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2714>.

⁽¹³⁾ The list provided in the notice of initiation was for information only. The final list contains the current classification.

- (26) The product under review can be produced through different processes, such the transesterification of oils and fats, a Fischer-Tropsch synthesis or the hydrotreatment of renewable feedstocks. It is a renewable fuel produced from a wide range of raw materials, including vegetable oils such as rapeseed oil, soybean oil or palm oil, used cooking oils, animal fats or biomass.
- (27) The investigation showed that biodiesel produced in Argentina is exclusively soybean methyl ester ('SME') derived from soybean oil, whereas a major share of biodiesel produced in the Union is rapeseed methyl ester ('RME'). SME and RME both belong to the category of fatty-acid methyl esters (FAME).
- (28) Biodiesel is typically used in the transport sector, mainly blended with fossil diesel but also in its pure form.

2.2. Product concerned

- (29) The product concerned by this investigation is the product under review originating in Argentina.

2.3. Like product

- (30) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
 - the product under review produced and sold on the domestic market of Argentina;
 - the product under review produced and sold by the exporting producers to the rest of the world; and
 - the product under review produced and sold in the Union by the Union industry.
- (31) These products are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

2.4. Claims regarding product scope

- (32) No comments regarding product scope were received.

3. LIKELIHOOD OF CONTINUATION OF SUBSIDISATION

- (33) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.

3.1. Subsidies and subsidy programmes within the scope of the investigation

- (34) On the basis of the information contained in the review request, as well as the information submitted by the GOA and the cooperating exporting producers, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Schemes originally investigated and countervailed

- (a) Government's support to the biodiesel industry including through the provision of soybeans for less than adequate remuneration
- (b) Real Estate exemption under the Santa Fe Industrial Law: exemption from paying real estate tax under Provincial Law No 8 478/1979 (Article 4) of Industrial Promotion; Provincial tax exemptions provided by the Province of Santa Fe; Article 183.29 Santa Fe Stamp Tax Exemption and Article 127 Santa Fe turnover tax exemption for export sales

Schemes originally investigated for which no benefit was found

- (c) Provision of loans and export financing on preferential terms and preferential lending
- (d) Government revenue forgone or not collected under the Biofuels Law of 2006
- (e) Provincial tax exemptions provided by the Province of Cordoba
- (f) Provincial tax exemptions provided by the Province of Buenos Aires
- (g) Province of Santiago del Estero System of Promotion and Industrial Development (PSPID) – Provincial Law No 6 750

New schemes

- (h) Direct transfer of funds: Financing programme for working capital in the biodiesel industry
- (i) Revenue foregone through the new Biofuels Law 27 640/2021.

3.2. **Background on the GOA's preferential policies for the biodiesel industry during the review investigation period**

- (35) Since the original investigation, the GOA's preferential policies concerning the biodiesel industry have developed as explained below.
- (36) While the legislative developments concerning each subsidy scheme are analysed in the respective sections, at broader level, the Law 26093 concerning the regulatory framework for biofuels, enacted in 2006 and analysed in the original investigation ('2006 Biofuels Law'), expired in May 2021 ⁽¹⁴⁾. Therefore, in 2021 it was replaced by Law 27640 ('2021 Biofuels Law'), which remained in force during the review investigation period ⁽¹⁵⁾.
- (37) The 2021 Biofuels Law provided for a domestic mandate of biodiesel where monthly biodiesel quotas were allocated to non-vertically integrated domestic producers of biodiesel for the supply of domestic blenders at government-regulated fixed prices.
- (38) For this purpose, the 2021 Biofuels Law entrusted the Secretariat of Energy as enforcement authority with functions like, among others: 'Regulate, administer and supervise the production, marketing and sustainable use of biofuels', 'carry out audits and inspections in enterprises and facilities for the production, storage and/or blending of biofuels', 'apply the penalties provided for' in the 2021 Biofuels Law, 'Guarantee the availability of the necessary inputs for the preparation of biofuels for the mandatory blending, being able to arbitrate and establish the mechanisms it deems necessary so that the acquisition of those is carried out according to the normal and usual conditions of the market and without any distortion, establishing as a limit, where applicable, the export price of such inputs less the respective costs', 'Determine the allocations of biofuels for the supply of the mandatory mixture' and 'Determine [...] the prices at which the commercialization of biofuels intended for the mandatory blending with fossil fuels [...] must be carried out' ⁽¹⁶⁾.
- (39) Pursuant to the 2021 Biofuels Law, the biodiesel to be supplied under the domestic mandate was subject to a local content requirement, insofar it had to be 'produced in plants installed in the Argentine Republic from national raw materials' ⁽¹⁷⁾. During the on-spot verification, the GOA confirmed that the soybean oil used for the production of biodiesel supplied within the mandate had to be of Argentinian origin. This meant that the biodiesel used to meet the blending mandate had to be produced in Argentinian plants using domestically produced feedstock ⁽¹⁸⁾.

⁽¹⁴⁾ Ley 26093, Régimen de Regulación y Promoción para la Producción y Uso Sustentables de Biocombustibles. Autoridad de aplicación. Funciones. Comisión Nacional Asesora. Habilitación de plantas productoras. Mezclado de Biocombustibles con Combustibles Fósiles. Sujetos beneficiarios del Régimen Promocional. Infracciones y sanciones.

⁽¹⁵⁾ Ley 27640, Marco Regulatorio de Biocombustibles: Aprobación.

⁽¹⁶⁾ Article 3, 2021 Biofuels Law.

⁽¹⁷⁾ Article 4, 2021 Biofuels Law.

⁽¹⁸⁾ 'Argentina: Biofuels Annual', United States Department of Agriculture (USDA) – Global Agriculture Information Network (GAIN) report No AR2021-0018, 18 August 2021 ('2021 GAIN Report'), p. 3, available at: <https://www.fas.usda.gov/data/argentina-biofuels-annual-6> and 'Argentina: Biofuels Annual', United States Department of Agriculture (USDA) – Global Agriculture Information Network (GAIN) report No AR2023-0008, 26 August 2023 ('2023 GAIN Report'), pp. 4-5, available at: <https://www.fas.usda.gov/data/argentina-biofuels-annual-8>.

- (40) The 2021 Biofuels Law established that *'The supply of the monthly quantities of biodiesel [...] shall be carried out by the companies that manufacture said biofuel that – either directly or indirectly through their controlling and/or controlled companies – do not carry out activities related to the export of biodiesel and/or its main inputs' (19)*. Hence, only non-exporting, non-vertically integrated companies could be involved in the biodiesel mandate, whereas large companies that exported biodiesel could not supply their product for the mandatory blend. The sampled exporting producers LDC Argentina S.A., Molinos Agro S.A. ('Molinos Agro') and Viterra Argentina S.A. ('Viterra Argentina') were not involved in the domestic mandate. Indeed, besides producing and exporting biodiesel, they were all active also in the crushing of soybeans into soybean oil, that they sold also to domestic biodiesel producers involved in the domestic mandate for them to produce their biodiesel. However, the Renova Group included – besides the exporting producers Molinos and Viterra Argentina – also companies which produced biodiesel for the domestic market and/or produced biodiesel under tolling for the exporting producers, which later exported it. These companies were involved in the domestic mandate.
- (41) It follows from the above that, vice-versa, biodiesel producers involved in the domestic mandate are legally prevented from exporting, thereby the GOA was segregating the domestic and export markets and the respective operators.
- (42) Additionally, *'For the purposes of the supply described above, [only] companies that comply with the premises established in this provision that have been authorized by the enforcement authority within the framework of Law 26.093 for the supply of biodiesel for mandatory blending at the time of the sanction of this Law will be considered [...]' (20)*. This meant that only companies which were active suppliers under the previous mandate under the 2006 Biofuels Law could become suppliers under the new law.
- (43) Initially, under the biodiesel mandate under the 2006 Biofuels Law, the mandatory blend rate of biodiesel in the fuel resulting from the blending was 10 %. Such rate was lowered by the 2021 Biofuel Law and the mandatory blend rate was set at 5 % (21). Pursuant to the 2021 Biofuels Law, the Secretariat of Energy could even lower the blend rate to 3 % it considered that economic conditions dictate a reduction in fuel prices, notably *'when the increase in the prices of basic inputs for the production of biodiesel could distort the price of fossil fuel at the pump' (22)*. However, in June 2022, Resolution 438/2022 raised the mandatory blend rate to 7,5 % (23).
- (44) However, for a 4-month period from mid-June 2022 to mid-October 2022, just at the beginning of the review investigation period, the GOA, by Decree 330/2022 and Resolution 638/2022, temporarily increased the biodiesel mandate by 5 % to 12,5 % due to a shortage of diesel on the market (24). Exceptionally, companies supplying the additional percentage included not only companies ordinarily involved in the domestic mandate, but also biodiesel exporters (25). Indeed, Molinos Agros took part in it. The GOA indicated that the price for this additional biodiesel supply was free, but Decree 330/2022 indicated that also the price of this temporary additional mandate was regulated in the form of a maximum price (26).
- (45) Therefore, during the review investigation period, the mandatory blend rate was 12,5 % for half a month and 7,5 % for the rest of the period.
- (46) During the on-spot verification, the GOA explained that in Argentina there is also a small domestic market for biodiesel outside the blending mandate. In this market, also exporters of biodiesel and vertically integrated biodiesel producers can participate. Such outside-mandate market corresponded only to 1,5-2 % of the whole domestic market for biodiesel.

(19) Article 11(1), 2021 Biofuels Law.

(20) Article 11(3), 2021 Biofuels Law.

(21) Article 8, 2021 Biofuels Law.

(22) Article 8, 2021 Biofuels Law.

(23) Ministerio de Economía – Secretaría de Energía, Resolución 438/2022, RESOL-2022-438-APN-SE#MEC.

(24) Decreto 330/2022, DECNU-2022-330-APN-PTE – Régimen de Corte Obligatorio Transitorio Adicional de Biodiésel and Ministerio de Economía – Secretaría de Energía, Resolución 638/2022, RESOL-2022-638-APN-SE#MEC.

(25) Article 2, Decree 330/2022.

(26) Article 4, Decree 330/2022.

- (47) Moreover, during the review investigation period, specifically between December 2022 and July 2023, a severe drought affected Argentina, negatively impacting the production of soybeans, as well as other crops. This can be clearly seen in Graph 1 that shows a significant drop in production of soybeans, maize, and wheat during that period (recital (125)). Nonetheless, production capacity remained stable also in the face of the drought and production went up after the drought, as can be seen in Graph 1. Therefore, the Commission considered the drought to be a temporary phenomenon.
- (48) As a consequence, while generally soybean production in Argentina fulfils the demand, in 2023 the sampled exporting producers resorted to import of soybeans from neighbouring countries less affected by the drought: Paraguay, northern regions of Brazil, and Bolivia. This was also confirmed by publicly available information ⁽²⁷⁾.
- (49) These soybeans were imported under the Temporary Import Regime, as was the case in the original investigation. Under the Temporary Import Regime, which is similar to the EU Inward Processing system, import duties are not levied as far as the input is processed and the resulting output is re-exported.
- (50) Soybeans imported under the Temporary Import Regime were used only to produce and re-exported soybean meal and oil, and not biodiesel. Indeed, the Temporary Import Regime works on the basis of a conversion ratio between imported input and re-exported output, which can apply to the crushing of soybeans into soybean meal and oil and re-export of these product, but not to the further production and re-export of biodiesel, which is a second production step downstream in the value chain.
- (51) Imported soybeans could be used to produce biodiesel only when actually imported, as opposed to imports under the Temporary Import Regime. This did not happen for several reasons. First, soybeans (as also soybean oil and biodiesel) imported from Mercosur countries (such as Paraguay, Brazil and Uruguay) were subject to a tax on purchases of foreign currency called *impuesto PAIS (Para una Argentina Inclusiva y Solidaria)*, calculated as a rate of the CIF value of the imports. In addition, soybeans (as also soybean oil and biodiesel) imported from non-Mercosur countries (such as Bolivia) were subject to the common Mercosur import duty and to a statistic fee, in addition to the *impuesto PAIS*. Therefore, actually importing soybeans into Argentina is expensive and therefore is not economically attractive. Second, the sampled exporting producers explained that it was more difficult to obtain sustainability certification of soybeans – needed for certain exporting destination, notably the EU – imported from Paraguay and Brazil, compared to soybeans produced in Argentina. This concerned, in particular, compliance under de-forestation rules, which do not concern Argentinian vast treeless plains. Finally, biodiesel used to meet the blending mandate (which constitutes the largest part of the domestic market, as indicated in recital (46)) had to be produced in Argentinean plants using domestically produced feedstock. Thus, imported soybeans could only be used in the production of biodiesel for the tiny remaining outside-mandate domestic market or for the export markets, in this latter case with the lack of economic rationale and the certification issues just described.

3.3. Schemes originally investigated and countervailed

3.3.1. Government's support to the biodiesel industry including through the provision of soybeans for less than adequate remuneration

- (52) The applicant in the request referred to the Commission's findings in the original investigation that the GOA had entrusted or directed the soybean growers to carry out its policy to create a compartmentalised domestic market and to provide soybeans to the biodiesel industry for less than adequate remuneration. Furthermore, in the original investigation, the Commission also found that the GOA conferred a benefit consisting of the difference between the prices paid by domestic biodiesel producers and the price they would have paid had market conditions prevailed in Argentina for soybeans. Furthermore, the GOA's set of measures was found to be specific as the measures were limited to a group of enterprises or industries, including the domestic biodiesel industry.

⁽²⁷⁾ <https://www.datamarnews.com/noticias/the-end-of-sojizacion-argentinas-new-path-as-soybean-importer/>.

- (53) The Applicant claimed that these measures were still applicable and will remain available to the Argentinian biodiesel industry in the coming years. These measures allegedly enable the Argentinian biodiesel industry to purchase raw material at lower costs, to boost the production and the exports of biodiesel.

3.3.1.1. The application of the provisions of Article 28(1) of the basic Regulation

- (54) On 20 January 2025, the Commission informed the GOA that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged support granted to the biodiesel industry including through the provision of soybeans for less than adequate remuneration for the reasons outlined below.
- (55) First, in the questionnaire, the Commission requested the GOA to provide the contact details (names, addresses and email) of all the companies supplying soybeans and soybean oil for the production of the product under review.
- (56) In its response, the GOA provided only the names and addresses of value chain operators involved in the distribution of soybean oil but not of the suppliers of soybeans. The GOA explained that it provided only the information for which it considered that its provision would not infringe the legal restrictions established to protect the companies' confidentiality according to Law No 17622 (notably its Articles 11 and 13) and complementary rules.
- (57) In its deficiency letter, the Commission reiterated its request as regards the contact details of producers of soybeans, since the GOA had provided the total number of soybean producers in Argentina, sourced from the Simplified Agricultural Information System of the Federal Public Revenue Administration, and should therefore be in the possession of such information.
- (58) In response, the GOA stated that the information of the companies concerned could not be provided because it was covered not only by Law No 17622, but also protected by Article 101 of Law No 11683 on fiscal secrecy, and therefore could not be submitted in the framework of the investigation.
- (59) Secondly, in the questionnaire, the Commission also requested the GOA to indicate the 10 largest producers of (i) soybeans; and (ii) soybean oil in Argentina and to provide, for all of them: (a) names; (b) locations; and (c) holding situation of the enterprise (e.g. State-owned, collectively owned, privately owned, foreign owned). Furthermore, for each of the 10 largest producers and distributors of (i) soybeans; and (ii) soybean oil in Argentina, the Commission requested the GOA to give details of the members of the Board of Directors and the management, and to identify those members who are also government officials or who occupy a position in any government authority or public body.
- (60) In its response, the GOA stated that the requested information was covered by Law No 17622 and complementing regulations and not susceptible of being provided.
- (61) In its deficiency letter, the Commission reiterated its request mentioned above, noting the GOA's reply to the questionnaire and indicating its initial understanding of the scope of Law No 17622, as well as citing a number of other instances where soybean suppliers appeared to provide to central and provincial authorities relevant data, which might not fall within the scope of Law No 17622. In addition, the Commission enquired whether the holding situation of a company, as well as the composition of its Board of Directors, was generally provided to the companies' registry.
- (62) In its response, the GOA clarified that information of the Secretariat of Agriculture, Livestock and Fisheries is protected under Law No 17622, and therefore could not be submitted in the framework of the investigation. In addition, the GOA explained that each province and autonomous territory in Argentina establishes and operates its own companies' registry and acknowledged that the holding structure of a company and its Board of Directors are communicated to the registry of the Autonomous City of Buenos Aires, for example. However, the information available on the holding structure of a company depended on the legal organization of the entity, and name and surname of the members of the Board of Directors could be consulted, but not all was open to public access, and therefore could not be submitted in the framework of the investigation.

- (63) Thirdly, in the questionnaire, the Commission further requested the GOA to forward Appendix A (questionnaire for input suppliers) to (i) the 10 largest producers and distributors of the input materials in question; as well as (ii) to any other producers and distributors of soybeans and soybean oil which have provided inputs to the two sampled exporting producers. In this respect, the Commission informed the GOA that it had requested each cooperating company to prepare a list of all their suppliers of the input materials in question and indicated to the GOA to coordinate with the cooperating exporting producers. The Commission also requested evidence (copy of email, letter or fax) showing that the GOA had sent Appendix A to the relevant producers and distributors as well as, if possible, proof that the producers and distributors received Appendix A (e.g. an acknowledgement of receipt).
- (64) In its response, the GOA did not provide the information requested and did not specify whether such information was already in its possession or whether it forwarded Appendix A to the relevant input producers and distributors. It merely stated that the information requested was covered by Law 17622 and complementing regulation and thus was not susceptible of being provided.
- (65) In its deficiency letter, the Commission reiterated its request, clarifying that the Commission was not seeking information from the GOA, but merely the GOA's assistance in obtaining the information from the soybean suppliers.
- (66) In its response, the GOA clarified that it completely understood the request made by the Commission, but re-iterated that it lacked a legal basis under which the information sought could be provided, as the data of the companies in question was protected by Article 101 of Law 11.683 on tax secrecy, and therefore could not be submitted in the framework of the ongoing anti-subsidy investigation. Once more, in its response, the GOA did not specify whether it forwarded Appendix A to the relevant input producers and distributors, and did not provide evidence of such action either.
- (67) During the on-spot verification, the Commission raised again these matters with the GOA.
- (68) In response, besides re-stating the confidentiality obligations to which the Argentinian authorities were bound, the GOA also stated that it was impossible for the GOA to provide a list of the registered soybean producers, first, because the number of soybean producers changed from crop season to crop season, and second, because there were approx. 60 000 soybean producers each crop year. The GOA also explained that the situation for biodiesel blenders is different, and it was, therefore, able to provide the names and contact details of the biodiesel blenders in the questionnaire reply. This is because, in contrast with soybean producers, blenders have to register in a publicly available registry in order to carry out their business activity. However, in recital (80) below, the Commission found that the information requested could have been prepared by the GOA by accessing the Argentinian tax authorities' databases.
- (69) In conclusion, with regard to the alleged provision of soybeans for less than adequate remuneration, the GOA refused access to and did not provide the necessary information and evidence as requested by the Commission in its questionnaire, in the deficiency letter and during the on-spot verification visit.
- (70) The absence of sufficient cooperation did not allow the Commission to collect all the information it considered necessary for its findings in this investigation. More specifically, the Commission could not obtain information and data on the soybean and soybean oil producers and the impact of an export tax on soybeans, soybean oil and biodiesel (see recitals (101) and (123)) on the production and price behaviour of soybean and soybean oil producers, as well as on the supply to the biodiesel producers.
- (71) This information included the identity of the soybean and soybean oil producers, the degree of State ownership and control over the largest amongst them, the behaviour and decisions of soybean and soybean oil producers faced with the export taxes and their changes, their production strategies and the possibility to switch to alternative crops, the availability and access to arable land, the market features and dynamics with regard to the differentiation between large companies and SMEs, the sales and marketing channels and strategies for their domestic and export markets, the prices and pricing policies in their domestic and export markets, the impact of the international price on their pricing policies, the competition situation domestically and in export markets, their profitability over the years, the impact of possible overcapacity and stockpiling strategies, the imports and exports of their main customers domestically and in export markets including the role of the crushers' industry and the added value achieved by the crushers' industry as well as the competition situation of the crushers' industry in Argentina and in international markets.

- (72) All this information, data and documents were necessary because their absence caused serious difficulties to arrive at an accurate and substantiated conclusion for the findings of continuation of subsidisation with regard to the alleged subsidy scheme consisting in the provision of soybeans for less than adequate remuneration. As a consequence, the absence of all this necessary information significantly impeded the investigation.
- (73) The above led the Commission to conclude that the GOA:
- Refused access to the necessary information requested (i) concerning the contact details of the suppliers of soybeans; (ii) concerning the name, location, holding situation, and details of the members of the Board of Directors and the management – including their relation with the GOA – of the 10 largest soybean and soybean oil producers in Argentina; and (iii) in the Appendix A of the relevant soybean and soybean oil suppliers, including evidence showing that the GOA had sent Appendix A to the relevant producers and distributors;
 - Did not provide necessary information concerning (i) the contact details of the suppliers of soybeans; and (ii) the name, location, holding situation, and details of the members of the Board of Directors and the management – including their relation with the GOA – of the 10 largest soybean and soybean oil producers in Argentina, in its replies within the deadline; and
 - Significantly impeded the investigation by not providing the necessary information requested concerning (i) the contact details of the suppliers of soybeans; and (ii) the name, location, holding situation, and details of the members of the Board of Directors and the management – including their relation with the GOA – of the 10 largest soybean and soybean oil producers in Argentina, in its replies within the deadline.
- (74) On this basis, on 20 January 2025, the Commission informed the GOA of its intention to apply Article 28(1) of the basic Regulation and asked the GOA to provide comments.
- (75) On 27 January 2025, the GOA provided its comments on the intended application of Article 28(1) of the basic Regulation. CARBIO also provided its comments in this regard.
- (76) In essence, the GOA acknowledged that some of the information provided were incomplete or lacked the level or detail requested, in particular with regard to the soybean producers, but disagreed with the qualification of this lack of cooperation as refusal to provide the necessary information and significant impediment to the investigation. In the GOA's opinion, the lack of provision of necessary information better described the circumstances of the case.
- (77) In particular, first, the GOA and CARBIO recalled that the current expiry review concerned biodiesel, for which soybean oil – and not soybeans – is an input. Production of soybeans would thus be only indirectly linked to the production of biodiesel and it would not constitute necessary information. However, the Commission wrongfully extended its analysis to the whole upstream value chain.
- (78) In this respect, the Commission noted that it requested the information necessary to analyse the allegation of subsidisation formulated by the applicant in the request, which concerned notably the provision of soybeans – biodiesel's main feedstock – for less than adequate remuneration to the benefit of biodiesel producers. Therefore, this claim was rejected.
- (79) Second, the GOA clarified that it did not collect or maintain a list of soybean producers as that requested by the Commission and was therefore not able to provide such information.

- (80) The Commission disagreed that the GOA could not provide such information, which was necessary for the investigation. In particular, the Commission noted that the GOA, in its comments on the application of Article 28 of the basic Regulation, explained that the preparation of the information requested would have required access to the Argentinian tax authorities' databases, thereby confirming that the information requested could have been prepared by the GOA. Therefore, the Commission dropped the qualification of refused access to necessary information and significant impediment to the investigation in relation to the contact details of the soybean suppliers, and concluded that the GOA failed to provide the necessary information requested. However, irrespective of the qualification, the lack of cooperation on the part of the GOA remained, in the form of failure to provide the necessary information, and the Commission still missed the necessary information requested and applied Article 28(1) of the basic Regulation.
- (81) Third, the GOA explained that it provided all information available to it but was legally impeded from providing other types of information, notably those related to the name, location, holding situation, and details of the members of the Board of Directors and the management – including their relation with the GOA – of the 10 largest soybean and soybean oil producers in Argentina.
- (82) The Commission noted that the Agreement on Subsidies and Countervailing Measures ('SCM Agreement') contains detailed rules and obligations for the investigating authority to protect confidential information. The Commission considered that, if such information is not provided, the investigating authority is allowed to have recourse to facts available. Therefore, the Commission had to maintain the qualification of refusal to provide the necessary information and significant impediment to the investigation in relation to the information on the 10 largest soybean and soybean oil producers in Argentina, and rejected this claim.
- (83) Finally, the GOA took aim at the list of information that the Commission was not able to obtain in recital (71) above, claiming, first, that the list of soybean producers would have not answered to those missing information, second, that the GOA answered to several of that information throughout the verification, and, third, that there were other reliable sources not bound to the same legal requirements of the GOA, notably the sampled exporting producers for information concerning the profitability and added value of crushing. In this latter respect, also the Argentinian Association of the Soybean Value Chain (*Asociación de la Cadena de la Soja Argentina* – 'ACSOJA') provided information on the capacity to switch between crops and market-related decisions.
- (84) The Commission noted that the information listed in recital (71) above was not only due to the lack of provision of the list of soybean producers, but to the lack of provision of all the information requested, listed in recital (73) above. Furthermore, the Commission did not discard the other information provided by the GOA, but more accurate information could have been received directly from the soybean producers, had the GOA forwarded to them the Appendix A. Finally, the Commission did not have an issue with the information provided by the GOA and ACSOJA during the verification, which are not sufficient to replace the information not provided and do not have a bearing in the qualification of the lack of cooperation of the GOA. Thus, this claim was rejected.
- (85) In conclusion, in the absence of necessary information, the Commission partially relied on facts available for its findings regarding the aspects of the investigation listed in recitals (70) and (71) in accordance with Article 28 of the basic Regulation.
- (86) Following final disclosure, the GOA reiterated that it did not possess a list of soybean producers.
- (87) As indicated in recital (80), the Commission did not submit that the GOA was in possession of such a list, but noted that the GOA had confirmed that the information requested in the list could have been prepared and submitted.
- (88) Moreover, the GOA claimed that preparing such a list, as well as forwarding the questionnaire to the ten largest suppliers of soybeans and soybean oil, would have required not only access to the data but also to surpass the legal provisions preventing the GOA from sharing such information with a third party. In this respect, the GOA claimed that the Commission wrongly invoked the rules of the SCM Agreement arguing that the obligation for the government officials in relation to the access and sharing of certain type of information is independent from and unrelated to any procedure to handle confidential information made available in the SCM Agreement.

- (89) Furthermore, the GOA claimed that the Commission was aware of these limitations since the original investigation and should have indicated the specific soybean producers it deemed crucial to participate in the current investigation. Thus, for those producers the limitations on the GOA would not apply, and the questionnaires could be directed to them.
- (90) The Commission considered that the scope of the SCM Agreement covers a situation where government officials are bound by national confidentiality obligations, as already explained in recital (82). Otherwise, the investigated Member could always invoke national confidentiality obligations in order not to provide cooperation in the context of an anti-subsidy investigation. The Commission is bound to protect the confidential information provided. In addition, in accordance with Article 29(6) of the basic Regulation, the Commission cannot use the information collected for any other purpose, as the information received during an anti-subsidy investigation shall be used only for the purpose for which it was requested. The Commission further noted that it could not be aware in advance of the GOA's limitation to provide such information based on a previous investigation, since circumstances may have changed. As the GOA never submitted a list of soybean producers neither in the original investigation nor in this review, and the Commission could not have been aware of or identify any of those producers. More importantly, the GOA proposed this as a possible solution only after final disclosure, i.e. at a very late stage of the investigation when it was not possible to implement it anymore, and did not explain why confidentiality limitations would not apply. Therefore, these claims were rejected.
- (91) The GOA also provided a series of assertions to address the lack of each type of information listed in recital (71) above, explaining the GOA's view on each of these or referring to the replies the GOA had provided in the context of this expiry review.
- (92) The Commission already explained in recital (84) that it did not have an issue with the information provided by the GOA, but rather with the information which had not been provided by or via the GOA, notably because the GOA never forwarded Appendix A to the relevant suppliers. In Appendix A, the Commission did not seek the GOA's view on the information requested from the soybean and soybean oil suppliers. The Commission already investigated and was aware of the GOA's view thanks to the GOA's questionnaire reply, although incomplete. Rather, the Commission sought the suppliers' view and information from them, taking into account that the scheme investigated consisted in the provision of soybeans for less than adequate remuneration. Therefore, this claim was rejected.

3.3.1.2. Analysis

- (93) In order to establish the existence of a countervailable subsidy, three elements must be present: (a) a financial contribution or income/price support; (b) a benefit; and (c) specificity.
- (94) To come to a conclusion on the first element, the Commission analysed if the set of measures adopted by the GOA lead to a financial contribution in the form of government's provision of soybeans for less than adequate remuneration to the Argentinian biodiesel exporting producers, following Article 3(1)(a) of the basic Regulation, and/or whether the set of measures adopted by the GOA falls under the category of income/price support of the biodiesel industry, following Article 3(1)(b) of the basic Regulation.

3.3.1.3. Financial contribution

- (95) As in the original investigation, the Commission observed that all sampled companies purchased soybeans domestically from either related or unrelated companies to process them into soybean oil and then biodiesel. The sampled exporting producers did not purchase soybean oil to further process into biodiesel (with the exception of negligible purchases by one of the sampled exporting producers, corresponding to 0,004 % of its soybean and soybean oil purchase volume during the review investigation period), as they crushed the soybeans into soybean oil themselves as an intermediate step for the production of biodiesel. Therefore, the analysis in the following subsections focuses on whether the GOA provided soybeans (rather than soybean oil) for less than adequate remuneration.

- (96) Article 3(1)(a)(iv), second indent, of the basic Regulation states that a financial contribution exists if a government: 'entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practise normally followed by governments'. The type of functions described by Article 3(1)(a)(iii) of the basic Regulation occurs where 'a government provides goods or services other than general infrastructure, or purchases goods ...'. Those provisions mirror paragraphs (iii) and (iv) of Article 1.1(a)(1) of the SCM Agreement and should be interpreted and applied in the light of the relevant WTO case law.
- (97) In line the relevant WTO case law, ⁽²⁸⁾ the Commission reviewed whether the findings of the original investigation concerning (i) the nature of the GOA's intervention (i.e. whether the GOA's intervention involves the entrustment of or direction to soybean producers); (ii) the nature of the entrusted bodies (i.e. whether soybean growers are private bodies within the meaning of Article 3(1)(a)(iv) of the basic Regulation); and (iii) the action of the entrusted or directed bodies (i.e. whether the entrusted or directed soybean growers provided soybeans to the Argentinian biodiesel industry for less than adequate remuneration and hence act as a proxy for the GOA), remained valid in the current review. The Commission assessed all the evidence contained in the expiry review request and the corresponding annexes on the continuation of the measure, as well as the evidence found during the investigation. The Commission also verified whether the function carried out by soybean producers would normally be vested in the government (i.e. whether the provision of soybeans for less than adequate remuneration to soybean oil producing companies in Argentina can be considered as a typical government activity) and whether such function does not, in real sense, differ from the practices normally followed by governments (i.e. whether the actual provision of soybeans by growers, in real sense, differ from what the government would have typically done itself).

3.3.1.3.1. Entrustment or direction of the soybean growers by the Government of Argentina

- (98) The Commission analysed first whether the GOA's support to the Argentinian biodiesel industry continued to be effectively an objective of a government policy and not merely a 'side effect' of the exercise of general regulatory powers. As in the original investigation, the current investigation examined in particular whether any price distortions found were part of the governments' objectives, or whether such distortions were rather an 'inadvertent' by-product of general governmental regulation. In line with the conclusions reached in recital (85), the Commission decided to partially use facts available pursuant to Article 28 of the basic Regulation to determine whether there has been an entrustment or direction of the soybean growers by the GOA.
- (99) In the original investigation the Commission concluded that a number of documents showed that the GOA explicitly pursued the support and development of the biodiesel industry as a policy objective, in particular by seeking to reduce the domestic price of the input materials (soybeans) and thereby providing a financial contribution to the production of biodiesel ⁽²⁹⁾. Furthermore, the Commission concluded that this support was achieved through several measures which, even though modified on several occasions since their introduction in 1994, had been constantly applied in order to, as stated by the GOA itself in the legislation, reduce the domestic price of soybeans in the context of rising world prices and to the benefit of the development of the value added chain in Argentina, which among others, include the biodiesel industry ⁽³⁰⁾.
- (100) Also during the review investigation period, the support of the biodiesel industry was achieved through several measures attributable to the GOA (including an export tax on soybeans; counter-measures on producing other grains such as by imposing export quotas; other measures in support of soybean growers, namely a local content requirement for biodiesel supplied within the domestic mandate; and subsidies to soybean producers to continue producing and selling domestically to biodiesel producers).

⁽²⁸⁾ Commission Implementing Regulation (EU) 2019/244, recs. (77)-(82).

⁽²⁹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (85).

⁽³⁰⁾ Commission Implementing Regulation (EU) 2019/244, rec. (86).

Export tax

- (101) In the original investigation, the Commission explained the evolution of the export tax on soybeans since its introduction in 1994 at the rate of 3,5 % up to the rate of 30 % pursuant to Decree 133/2015 ⁽³¹⁾. In that respect, the GOA explained in its comments on initiation of the current investigation that several of the resolution described therein were no longer applicable. This was the case for Resolution 10/2007, Resolution 369/2007, Resolution 64/2008 and Resolution 125/2008.
- (102) Since the original investigation, Decree 230/2020 ⁽³²⁾, which has been the legal basis in force and applicable since March 2020, increased the export tax rate of both soybeans and soybean oil from 30 % to 33 %.
- (103) After that, Decree 790/2020 ⁽³³⁾, in force as of October 2020, envisaged a gradual change in export tax rates in the following months, which resulted, as of January 2021, in a differentiated export tax rate for soybeans and soybean oil. Indeed, as of January 2021, soybean oil was subject to a reduced rate of 31 %, whereas soybeans remained subject to the 33 % rate.
- (104) However, Decree 131/2022 ⁽³⁴⁾, in force since March 2022, temporarily suspended the reduction of the export tax on soybean oil stipulated by Decree 790/2020 until 31 December 2022. By consequence, it reinstated the higher export tax on soybean oil as defined in Decree 230/2020 (33 %). The export tax on soybeans remained 33 % throughout this period.
- (105) As of 1 January 2023, the Decree 790/2020 was automatically reinstated, levying again the export tax on soybean oil of 31 % and on soybeans of 33 %.
- (106) Therefore, in the first quarter of the review investigation period an export tax of 33 % was levied on both soybeans and soybean oil, whereas in the last three quarter of the review investigation period the export tax amounted to 33 % on soybeans and of 31 % on soybean oil.
- (107) Biodiesel itself is subject to an export tax. Pursuant to Decree 230/2020, the export tax on biodiesel was raised from the 27 % to 30 % as of March 2020. Then, pursuant to Decree 790/2020, in force as of October 2020, the export tax was lowered to 26 % for the month of October 2020 but gradually increased in the following months, resulting, as of January 2021, in an export tax rate of 29 %. Decree 131/2022 temporarily reinstated the 30 % export tax pursuant to Decree 230/2020 until 31 December 2022. Finally, as of 1 January 2023, the export tax on biodiesel was again set at 29 %.
- (108) Therefore, the export tax rate applicable to biodiesel was 30 % in the first quarter of the review investigation period and 29 % in the last three quarters of the review investigation period.
- (109) The GOA explained during the on-spot verification that the reduced difference in export tax rate at the end of the review investigation period between the three products (33 % for soybeans, 31 % for soybean oil, 29 % for biodiesel) corresponded to the addition of added value between the production steps.
- (110) However, the way of calculating the two export taxes, on soybeans and soybean oil on one side, and on biodiesel on the other side, is different, which does not confirm the statement of the GOA in this respect.
- (111) Indeed, the GOA during the on-spot verification explained that the export tax on soybeans and soybean oil applies as a percentage of an official FOB price of the product in question, published daily by the Secretariat of Agriculture, Livestock and Fisheries pursuant to Resolution of the Ministry of Agroindustry 411E/2017 and based on the average of the prices declared by the exporters during the day ⁽³⁵⁾. An official FOB price is published for both soybeans and soybean oil, while this is not the case for biodiesel.

⁽³¹⁾ Commission Implementing Regulation (EU) 2019/244, recs. (89)-(100).

⁽³²⁾ Decreto 230/2020, DCTO-2020-230-APN-PTE – *Fijase alícuota del Derecho de Exportación*.

⁽³³⁾ Decreto 790/2020, DCTO-2020-790-APN-PTE – *Derecho de Exportación*.

⁽³⁴⁾ Decreto 131/2022, DCTO-2022-131-APN-PTE – *Suspensión Decreto N° 790/2020*.

⁽³⁵⁾ Official FOB prices are available, also for the review investigation period, at the following link: https://dinem.magyp.gob.ar/dinem_fob_wp_fob_consall.aspx.

- (112) In fact, the sampled exporting producers explained during the on-spot verification visit that the FOB price in USD declared upon export of biodiesel before the customs authorities is already inclusive of the export tax, also declared in USD, which means that the 29 % export tax on biodiesel is effectively calculated on a price lower than the total FOB price declared to customs. As a result, the effective rate (*tasa efectiva*) levied on biodiesel is only 22,48 % of the FOB price in USD.
- (113) It follows from the above that the effective differential between the export tax on biodiesel and the export tax on the first product upstream in the value chain, i.e. soybean oil, is higher than the 2 % shown by the two tax rates (29 % and 31 % respectively) and amounts in reality to 8,52 % (i.e. the comparison between the 22,48 % effective rate for biodiesel and the 31 % rate for soybean oil). Moreover, such effective differential was even higher in the first quarter of the review investigation period, when the 30 % export tax on biodiesel corresponded to an effective rate of 23,07 % and the export tax on soybean oil was set at 33 %. In this quarter, the effective differential was 9,93 %. This was confirmed by both Argentinian and international public sources ⁽³⁶⁾.
- (114) As a consequence, the Commission found that the assessment of several international agencies on the effects of the different rates of export taxes, reported in the original investigation ⁽³⁷⁾, continued to be applicable and valid.
- (115) In particular, according to the OECD, the GOA, through its export tax regime, imposes 'higher rates for raw materials or input producers while lower rates apply for finished products. [...] The price advantage provided to domestic downstream industries can distort and reduce competition in both domestic and foreign markets' ⁽³⁸⁾. In addition, the International Renewable Energy Agency (IRENA) stated in a report dedicated to Argentina that 'Differential export taxes for biofuels versus other products derived from the same feedstock promoted the export of biofuels, especially biodiesel' ⁽³⁹⁾. In turn, the World Bank stated that the GOA 'levies high export taxes on both soybean oil and biodiesel' (which, at the time of the report, were set at 32 % and 16,6 % respectively) which have the effect of 'lowering the feedstock cost domestically and encouraging exports of biodiesel' ⁽⁴⁰⁾.
- (116) The Commission noted that this assessment reconciles with the objectives of the GOA's policy as described in the relevant legislation. The Commission noted that one of the non-numbered recitals of Decree 131/2022 – which maintained the 33 % export tax on soybeans and temporarily raised export taxes on soybean oil and biodiesel – mentioned, amongst the objectives for which the GOA was empowered to levy export duties, 'stabilize internal prices at convenient levels or maintain a volume of offers adequate to the supply needs of the internal market'.

⁽³⁶⁾ 'Revés para el complejo soja: cómo afecta el aumento de DEX a la industria del biodiesel santafesino que sopesará un aporte extra de US\$ 6 millones este año', *Informativo semanal* Año XXXIX – N° Edición 2044, 25 March 2022, Bolsa de Comercio de Rosario, available at: <https://www.bcr.com.ar/es/mercados/investigacion-y-desarrollo/informativo-semanal/noticias-informativo-semanal/reves-para-el> and 2024 GAIN Report, pp. 10-11.

⁽³⁷⁾ Commission Implementing Regulation (EU) 2019/244, rec. (87).

⁽³⁸⁾ The Economic Impact of Export Restrictions on Raw Materials, published in 2010, p. 18, available at: <http://www.oecd.org/publications/the-economic-impact-of-export-restrictions-on-raw-materials-9789264096448-en.htm>.

⁽³⁹⁾ Renewable Energy Policy Brief Argentina, June 2015, available at: https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2015/IRENA_RE_Latin_America_Policies/IRENA_RE_Latin_America_Policies_2015_Country_Argentina.pdf?la=en&hash=4A7F4CDAB9E00B7739363467AB2B2ADA67C94CDC.

⁽⁴⁰⁾ Liquid Biofuels: Background Brief for the World Bank Group Energy Sector Strategy, Background Paper for the World Bank Group Energy sector strategy, March 2010, p. 9, available at https://www.ourenergypolicy.org/wp-content/uploads/2016/03/Biofuel_brief_Web_version.pdf.

- (117) The fact that the export tax on soybeans was meant to ensure the provision of the raw material in particular to the biodiesel industry was shown by the legislative history of the measure. Indeed, already in the previous investigation the Commission had noted that Joint Resolution 438/2012, 269/2012, 1001/2012 ⁽⁴¹⁾ referred to the differential between the effective rate for biodiesel and the rate for its main input (i.e. soybeans) ⁽⁴²⁾, and that Decree 133/2015 ⁽⁴³⁾ adjusted the export tax on soybeans and recalled that *'the increase in the planted area and the record harvest of the past season has not prevented the decline of competitiveness and profitability of its entire associated value chain'*, including biodiesel ⁽⁴⁴⁾.
- (118) Successive acts adopted a similar approach. For example, Decree 1343/2016 ⁽⁴⁵⁾, which slightly lowered export duties established by Decree 133/2015, explained in the recitals that *'it is necessary to continue implementing effective measures concurrent to the realization of that purpose, particularly in the case of soybeans and their by-products, and that provide predictability and certainty to the market with respect to the progressive way in which the export duties applicable to such goods will be reduced'* (emphasis added). Soybean by-products include biodiesel.
- (119) Similarly, Decree 1025/2017 ⁽⁴⁶⁾, which set the export tax on biodiesel at the time at 8 %, recalled in the recitals that *'a harmonization between the export duties of biodiesel and that of its main raw material, soybean oil, is necessary to achieve convergence between them'* (emphasis added).
- (120) Decree 230/2020 and Decree 131/2022 did not mention expressly this link, because they only modified the exports tax rates in force on a variety of products. Instead, the GOA's official view concerning soybeans as an input for biodiesel remained evident in Decree 790/2020 by the fact that it concerned only export taxes on soybeans and soybean-based products, including biodiesel. In particular, Decree 790/2020 in the recitals recalls that *'by means of Decree No 230/20, the export duty rates for different goods were established, including certain tariff headings of the MERCOSUR COMMON NOMENCLATURE (N.C.M.) referring to certain soybean products and by-products'* (emphasis added). The soybean products whose export tax rate was modified include biodiesel.
- (121) Therefore, as in the original investigation, the GOA, by setting the export tax rates of soybeans, soybean oil and biodiesel at the same time, by means of the same legislative act, such as Decree 790/2020, continued to show that it intended its soybean policy as a means to ensure the availability of supply at low price for biodiesel also during the review investigation period. This is confirmed by the fact that in recital (109) above the GOA stated that it considered the three export tax rates between soybean, soybean oil and biodiesel as corresponding to the different steps of added value and, thus, as part of the same value chain.
- (122) This finding is further reinforced by the fact that the export tax guards all the steps in the value chain from the input concerned – soybeans – to the intermediate step – soybean oil – up to the product under investigation, i.e. biodiesel, leaving no 'safety valve' or alternative to the domestic supply for soybean producers, considering that all biodiesel exporters are vertically integrated and are also the main operators crushing soybeans into soybean oil.
- (123) In view of the above, by imposing export taxes on soybeans, the GOA puts Argentinian soybean growers into an economically irrational situation, which induces them to selling their goods domestically for a lower price than they could obtain in the absence of those export taxes. They are therefore deprived of a rational choice and induced to comply with the policy objectives behind the export tax.

⁽⁴¹⁾ Ministerio de Economía y Finanzas Públicas, Ministerio de Industria y Ministerio de Planificación Federal, Inversión Pública y Servicios, Comercio Exterior, Resolución Conjunta 438/2012, 269/2012, 1001/2012 créanse el Registro de Operadores de Soja Autorizados (ROSA) y la 'Unidad Ejecutiva Interdisciplinaria de Monitoreo'. Derógase la Resolución No 109/09.

⁽⁴²⁾ Commission Implementing Regulation (EU) 2019/244, rec. (99).

⁽⁴³⁾ Ministerio de Agroindustria, Decreto 133/2015, Derecho de exportación. Alícuota.

⁽⁴⁴⁾ Commission Implementing Regulation (EU) 2019/244, rec. (100).

⁽⁴⁵⁾ Ministerio de Agroindustria, Decreto 1343/2016, Derecho de exportación. Alícuota. Modificación.

⁽⁴⁶⁾ Comercio Exterior, Decreto 1025/2017, Derogación. Decreto N° 1719/2012.

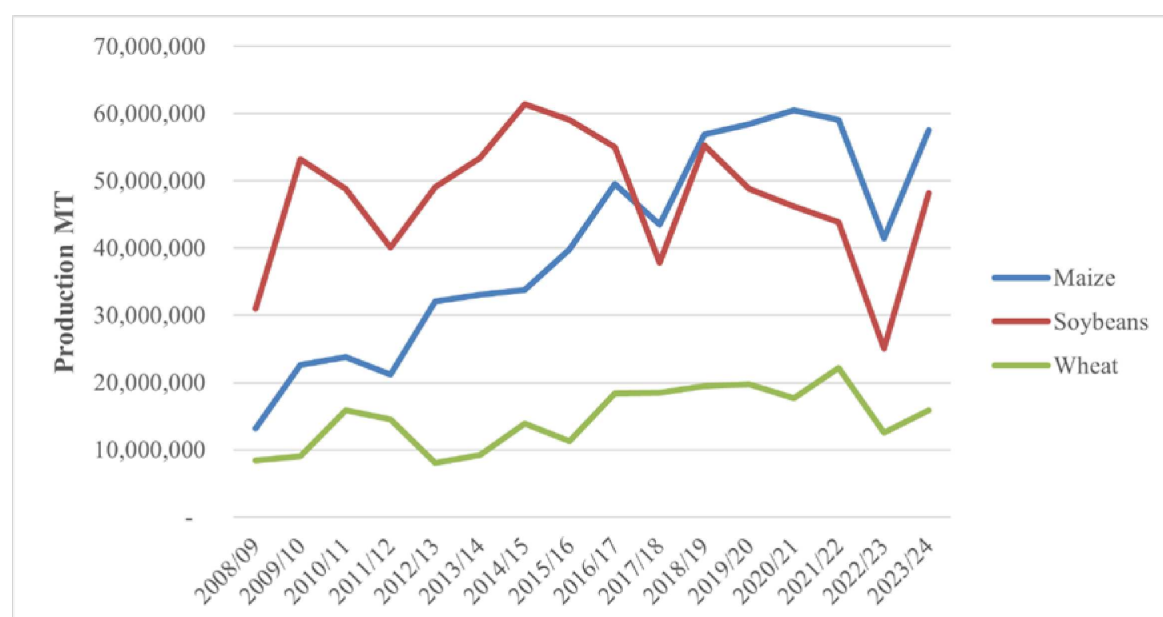
Export quota on maize and wheat

(124) The original investigation found that the irrational situation in which soybean growers were placed was amplified by other export restraints, such as export quotas on maize and wheat in force from 2008 until 2015, discouraging the export of other crops and directing growers toward continuing the production of soybeans (as opposed to other grains), and lowering the domestic price even further ⁽⁴⁷⁾. This long period of export restraints on other crops led to significant production increase in soybeans, the so-called *sojización* ⁽⁴⁸⁾. As shown in Graph 1, the production of soybeans almost duplicated between 2008 and 2015, reaching a production record of 61,4 million tonnes. After the removal of the export quotas in 2015 and until harvesting year 2016/17, the production of soybeans did not decrease significantly in this limited period in comparison with the other crops and remained rather stable ⁽⁴⁹⁾.

(125) In Graph 1, the Commission reported the production of soybeans, maize and wheat per harvesting year since 2008, complementing the respective data reported in the original investigation. In this respect, the harvesting or crop year is the time period from one harvest to the following one. Thus, there is a certain discrepancy between harvesting years and calendar years. The harvesting year for soybeans starts on 1 April and ends on 31 March.

Graph 1

Argentinian production of soybeans, maize, and wheat per harvesting year



Source: <http://datosestimaciones.magyp.gob.ar/>.

(126) Following data showed that since 2018, in the absence of export quotas, production of maize especially and wheat increased, whereas soybean production decreased. The applicant explained this decrease as an effect of the trade defence measures imposed by the European Union, the US and Peru.

(127) In order to address the negative effects of the trade defence measures, the applicant alleged that the GOA reenacted export quotas on maize and wheat through Resolution 276/2021 ⁽⁵⁰⁾, which was expected to produce the same shifting effect as of the policies implemented between 2008 and 2015.

⁽⁴⁷⁾ Commission Implementing Regulation (EU) 2019/244, recs. (104)-(105).

⁽⁴⁸⁾ Commission Implementing Regulation (EU) 2019/244, rec. (107).

⁽⁴⁹⁾ *Ibidem*.

⁽⁵⁰⁾ Ministerio de Agricultura, Ganadería y Pesca, Resolución 276/2021, RESOL-2021-276-APN-MAGYP.

(128) The Commission, therefore, investigated whether the export quotas on maize and wheat were still in place.

(129) ACSOJA explained during the on-spot verification that there is no obligation to switch from one crop to another and that growers remain free to decide which crops to grow on the land they cultivate, whether soybeans or others. The GOA explained in its questionnaire reply and during the on-spot verification that the qualification of the system established by Resolution 276/2021 as export quotas was incorrect, insofar it was rather export balancing volumes or volumes of equilibrium of exports (*volúmenes de equilibrio*). Such volumes were established by a Consultative Council (*Consejo Consultivo*) where representatives of the domestic consumption, the export sector and the GOA sit. Based on the domestic consumption and export needs, the Council sets the balancing volume, which is adjusted based on supply and demand. The GOA explained that the volumes were usually set above the actual exports as the goal was to provide predictability to market operators rather than blocking exports. However, should 90 % of the balancing volume be reached, only mandatory affidavits of export sale (*declaraciones juradas de venta al exterior* – ‘DJVE’ 30) valid for export in a period of 30 days could be submitted to the customs authorities – rather than DJVEs valid for export in a period of 360 days (DJVE 360). Once the full balancing volume was exhausted, exports of maize and wheat could not take place anymore. The balancing volumes were publicly available ⁽⁵¹⁾.

(130) Indeed, the investigation showed that, as concerns the review investigation period, the initial balancing volume for the harvesting year 2022/23 of 10 million tonnes of maize ⁽⁵²⁾ was subsequently adjusted to 20 million tonnes ⁽⁵³⁾ and then 26 million tonnes ⁽⁵⁴⁾.

(131) Instead, the initial balancing volume for the harvesting year 2022/23 of 2 million tonnes for wheat ⁽⁵⁵⁾ was subsequently adjusted to 10 million tonnes ⁽⁵⁶⁾ and then confirmed at the same 10 million tonnes volume ⁽⁵⁷⁾.

(132) After the review investigation period, in December 2023, the limit of the balancing volume was reached, and the GOA blocked the registration of new DJVEs for a few days ⁽⁵⁸⁾. Also, one sampled exporting producer reported that even when the balancing volume was reached in a given year and exports were blocked, this did not have a significant effect on exports because it happened towards the end of that year.

(133) The Commission noted that – while the shifting effect due to the new system under Resolution 276/2021 may have been hampered by the drought which in 2023, during the review investigation period, affected the production of all three crops under consideration in Argentina, as can be seen in Graph 1 – soybean production in 2021/22, before the drought, was still 42 % higher than it was before the GOA implemented the policy to divert grain production in support of soybean growers, in 2008/09. Moreover, in 2023/24, after the drought, while soybean production recovered and increased compared to pre-drought production in 2021/22, both maize and wheat did not reach the pre-drought production level.

(134) In addition, in the period without restrictions between 2015 and 2021, while the production of soybeans decreased, the production of maize and wheat increased.

(135) Finally, the system established by the exporting balancing volume, while it may provide for a moveable quota, still implied that, once the quota was exhausted, exports of maize and wheat were blocked. The fact that in 2023 this happened only for few days does not contradict a potential longer blockage of exports, which was in the GOA's discretion during the review investigation period.

(136) This led the Commission to conclude that the export balancing volumes in force since 2021 and during the review investigation period contributed to favouring the production of soybeans over maize and wheat, directing growers toward continuing the production of soybeans (as opposed to other grains), lowering the domestic price in line with the GOA's policy objectives.

⁽⁵¹⁾ https://www.magyp.gob.ar/sitio/areas/ss_mercados_agropecuarios/djve/index.php?accion=imp.

⁽⁵²⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 3/2022, 6 May 2022.

⁽⁵³⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 5/2022, 8 November 2022.

⁽⁵⁴⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 1/2023, 26 October 2023.

⁽⁵⁵⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 06/2021, 17 December 2021.

⁽⁵⁶⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 2/2022, 28 March 2022.

⁽⁵⁷⁾ Subsecretaría de Mercados Agropecuarios, Circular SSMA N° 1/2023, 26 October 2023.

⁽⁵⁸⁾ Circular 2/2023, 11 December 2023 and Circular 3/2023, 14 December 2023.

Temporary import ban on soybeans and other measures in support of soybean growers

(137) In the original investigation, the Commission explained the impact of a temporary import ban on soybeans and, after its removal, of highly cumbersome procedures for the import of soybeans, on the use of domestic soybeans for the production of biodiesel. The Commission also concluded that the import ban, in combination with the export tax on soybeans, confirmed the GOA's policy objective to boost the development of a fully domestic biodiesel industry including local contents in the supply chain. It created an artificial, government-driven output of soybeans in Argentina for domestic consumption ensuring that local demand for soybeans is satisfied on the basis of local supply oriented towards achieving the stated policy objectives ⁽⁵⁹⁾.

(138) During the review investigation period, there was no import ban applied on soybeans.

(139) Nonetheless, as explained in recital (38) above, the 2021 Biofuels Law – which was applicable during the review investigation period – disincentivised the import of soybeans when it enacted a local content requirement, whereby biodiesel used to meet the blending had to be produced in Argentine plants using domestically produced feedstocks. As a consequence, the GOA created a captive market for domestic soybeans, segregating the domestic value chain from the world market and shielding it from import pressure. By intervening on the market, the GOA achieved its goal to increase output and lower domestic prices to the benefit of the biodiesel industry.

Subsidies to soybean producers

(140) In the original investigation, the Commission had found that the GOA directed soybean growers into the production of soybeans and thereby causing increased domestic supply of soybeans in favour of the development of the biodiesel industry ⁽⁶⁰⁾.

(141) The applicant alleged that the GOA continued to provide support to soybean producers, notably through the implementation of two compensation programs.

(142) The first one was a compensation and stimulus program for small soy producers and cooperatives pursuant to Decree 786/2020 ⁽⁶¹⁾. The applicant alleged that under this program, soybean growers received export tax refunds depending on their cultivated areas and that, while the scheme was in force until 31 December 2020, it had been continued by subsequent governmental action and legislation, not further clarified by the applicant.

(143) The Commission, therefore, investigated whether the scheme was still in force during the review investigation period.

(144) The GOA argued that soybean growers did not benefit from the export tax refund, given that export taxes were not borne by them. Rather, the GOA explained that the relevant recital of Decree 786/2020 made reference to Law 27541 ⁽⁶²⁾, which, while allowing the GOA to raise export taxes up to 33 %, provided that 3 % of the incremental value of export taxes should be allocated to the creation of a fund to increase the competitiveness of small and medium-sized producers and cooperatives ⁽⁶³⁾. Law 27541 also added that *'The National Executive Branch shall establish mechanisms [of] segmentation and stimulus aimed at improving profitability and competitiveness of small producers and cooperatives whose activities are affected by the eventual increase in the rate of export duties [...]'* (emphasis added) ⁽⁶⁴⁾. The disbursement of this fund was based on the volume of soybeans sold by growers from February 2020 up to December 2020, up to a limit in terms of volume of soybeans per cultivated hectare.

⁽⁵⁹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (106).

⁽⁶⁰⁾ Commission Implementing Regulation (EU) 2019/244, rec. (108).

⁽⁶¹⁾ Decreto 786/2020, DCTO-2020-786-APN-PTE - Disposiciones.

⁽⁶²⁾ Ley 27541, *Ley de Solidaridad Social y Reactivación Productiva en el Marco de la Emergencia Pública*.

⁽⁶³⁾ Article 52, Law 27541.

⁽⁶⁴⁾ Article 53, Law 27541.

- (145) Due to the lack of cooperation of the GOA in forwarding the Appendix A to the soybean suppliers, the Commission could not verify whether the soybean growers benefitted from this scheme. However, based on the provision of Article 28, the detailed explanation provided by the GOA constituted facts available which indicated that the scheme had indeed been active and disbursed in relation to sales made until 31 December 2020. Since the applicant did not detail which subsequent governmental action and legislation continued this scheme the Commission could not find any measure in this respect and the GOA confirmed that the measure applied to sales made until 31 December 2020, the Commission concluded that, being disbursed until 31 December 2020, this scheme was not active during the review investigation period
- (146) The second one of these programs consisted in a compensation program for small and medium soybean and corn producers under Resolution 862/2022, enacted in November 2022 ⁽⁶⁵⁾. Under this program, the benefit to be received by each soybean producer was up to USD 6,500 per declared soybean hectare and the total benefit to be received by beneficiaries was USD 1,730 million.
- (147) The investigation revealed that the compensation program was funded by the Export Increase Fund (*Fondo Incremento Exportador*), established pursuant to Article 9 of Decree 576/2022 ⁽⁶⁶⁾. In turn, this Fund was financed through the additional export tax (including on soybeans, soybean oil and biodiesel) collected through the increased exports obtained through the Export Increase Program (*Programa de Incremento Exportador*). Pursuant to Decree 576/2022, the Export Increase Program was the GOA's program to foster exports by offering an attractive USD-ARS currency exchange to exporters of soybean-based products (the so-called *sojadollar*), which ensured the entry of foreign currency in the federal reserves in a highly inflationary economic context.
- (148) The period of implementation and the termination of the compensation program were established in Article 5 of Resolution 862/2022, which set out that the period for submitting applications was 15 business days from the publication of the regulation in the Official Bulletin. After that period had expired, there was no possibility of submitting further applications. Accordingly, the execution of the program, as provided for in Article 8 of Resolution 862/2022, was made effective in the month of December 2022, through the issuance of Resolution 276/2022 ⁽⁶⁷⁾, which detailed the list of beneficiaries of the program. With that administrative act, the application of the program ended. No claim was submitted by the applicant that the program continued further, and the Commission did not find any evidence in this respect.
- (149) Therefore, the compensation program was active during the review investigation period. Due to the lack of cooperation of the GOA in forwarding the Appendix A to soybean suppliers, the Commission could not verify the role this compensation program played for them. However, based on the provision of Article 28, the list of beneficiaries of the program constituted sufficient evidence of the disbursement of this program during the review investigation period.
- (150) In conclusion, the compensation program and its legal bases stand as clear evidence that the GOA expected that its export measures may have negative effects on the domestic soybean growers and did not shy away from using the proceeds from those same export measures (i.e. the revenue deriving from the export taxes) to mitigate those effects by compensations awarded to the soybean growers. This scheme is another way the GOA uses to entrust or direct the soybean growers to carry out its policy and to provide soybeans to the domestic biodiesel industry for less than adequate remuneration.

⁽⁶⁵⁾ Ministerio de Economía, Resolución 862/2022, RESOL-2022-862-APN-MEC.

⁽⁶⁶⁾ Decreto 576/2022, Programa de Incremento Exportador, DECNU-2022-576-APN-PTE – Creación.

⁽⁶⁷⁾ Ministerio de Economía – Secretaría de Agricultura, Ganadería y Pesca, Resolución 276/2022, RESOL-2022-276-APN-SAGYP#MEC.

Analysis

- (151) As in the original investigation, the Commission considered that, in view of the evidence available, the GOA continued to take a 'more active role than mere acts of encouragement', as required by the Appellate Body ⁽⁶⁸⁾. The set of measures taken by the GOA, considered together, restrict the freedom of action of the soybean growers by limiting in practice their business decision at what price to sell their product and where.
- (152) Soybean growers are thus prevented from maximising their income that they would be able to get in the absence of the export tax on soybeans (e.g. by exporting their production to benefit from higher prices or by increasing domestic prices) as well as other similarly restrictive measures.
- (153) This is further supported by Resolution 862/2022 in which the GOA takes specific measures to help the soybean industry and its associated value chain to reverse the occurred decline in the competitiveness and profitability of its entire associated value chain. Thus, soybean growers are financially supported, encouraged or directed by the GOA to maintain production to supply the domestic market even if a rational supplier would adapt its output and prices in a situation where exports have been disincentivised.
- (154) Therefore, through those measures the GOA induces the soybean growers to keep the soybeans in Argentina because they cannot sell at better prices which would prevail in Argentina absent those measures.
- (155) In this sense, the input producers are 'entrusted' or 'directed' by the GOA to provide goods to the domestic users of soybeans, i.e. biodiesel producers, for less than adequate remuneration. The soybean growers are given the responsibility to create an artificial, compartmentalised, low-priced domestic market in Argentina.
- (156) In other words, the set of measures described above applied by the GOA aimed at minimising the negative impact of the measures on soybean growers while inducing them to follow a particular behaviour, which is not merely the result or effect of the GOA's measures. While the soybean growers may lower their domestic production slightly to respond to the export taxes and other restrictive measures, the evidence shows that production did not stop, nor did it significantly decrease (with the exception of 2023, affected by the drought, see Table 1 below). The Commission concluded that this is a result of the GOA's actions entrusting and directing the soybean growers to continue production.
- (157) Measures mitigating the impact of the GOA's export restrictions on soybean producers were provided for in the same legal bases where export restrictions were imposed (e.g. the Export Increase Fund in Decree 576/2022 establishing the Export Increase Program, as well as in the past Law 27541 which, while allowing the GOA to raise export taxes up to 33 %, provided that 3 % of the incremental value of export taxes should be allocated to the creation of a fund for affected soybean growers). Therefore, the effects were established by the GOA on an *ex ante*, not on an *ex post* basis, and were therefore not 'inadvertent'. There is a clear 'demonstrable link' between the policy and the conduct of private bodies involved, which are acting as a proxy for the GOA to carry out its policy of providing soybeans for less than adequate remuneration to the biodiesel industry.
- (158) CARBIO and the GOA claimed that the export taxes at issue were not a countervailable subsidy. According to CARBIO, export taxes are not a financial contribution within the meaning of Article 3(1)(a)(iv) of the basic Regulation. CARBIO maintained that the interpretation of entrustment or direction offered by the General Court ⁽⁶⁹⁾ and by the WTO case-law could not lead to conclude that the GOA entrusted or directed soybean producers. In fact, the export tax on soybeans did not allocate to soybean producers the task of selling soybeans domestically at prices lower than global prices. Rather, according to the GOA, they were meant to increase the fiscal revenues and, based on budgetary evidence, still represented a very important source of revenue for the GOA.

⁽⁶⁸⁾ Appellate Body Report, DS296, *US – Countervailing Duty Investigation on DRAMS*, para. 115.

⁽⁶⁹⁾ Notably the judgment of 14 December 2022, *PT Pelita Agung Agrindustri and PT Permata Hijau Palm Oleo v Commission*, T-143/20, ECLI:EU:T:2022:811, para. 102.

(159) The Commission recalled that the sole fact that export taxes as such are not explicitly mentioned in Article 3(1)(a) of the basic Regulation does not exclude them from having the potential nature of a financial contribution and would therefore fall within the definition of a subsidy under the basic Regulation and the SCM Agreement, and more so when they act in conjunction with other set of governmental measures. Indeed, the case-law of the General Court confirms that the objective of export restraint systems may be to directly and indirectly support the biodiesel industry ⁽⁷⁰⁾. The Commission provided ample evidence that the export tax on soybeans was used as a tool, together with other instruments, to induce soybean growers to comply with the stated policy objectives in a manner amounting to a countervailable subsidy as specified under Article 3(1)(a) of the basic Regulation. As regards the objective of the export taxes, the Commission noted that the legislation mentioned also the objective to 'stabilize internal prices at convenient levels or maintain a volume of offers adequate to the supply needs of the internal market', as indicated in recital (116). Therefore, this claim was rejected.

(160) CARBIO and the GOA claimed that export taxes did not otherwise limit their choice of producing, selling and exporting their products. In addition, the GOA submitted that official FOB prices were only used as a taxable basis for the export tax, thus export prices were set freely.

(161) The Commission noted that the investigation showed that the soybean production was indeed influenced by the export restrictions on other crops, that domestic price of soybeans remained below the world market price (see Graph 3) and that the amount of export taxes paid on soybeans depended on the official FOB price set by the GOA. The export tax based on the official FOB price necessarily does not leave free discretion to soybean growers in setting the export price. Finally, as shown in the above analysis, the export tax is not the only tool devised by the GOA to direct soybean growers. Therefore, this claim was rejected.

(162) In conclusion, as in the original investigation, the Commission found that the GOA continues to entrust or direct the soybean growers to carry out its policy to create a compartmentalised domestic market and to provide soybeans to the domestic biodiesel industry for less than adequate remuneration.

(163) Following final disclosure, the GOA claimed that soybeans are not a direct raw material for biodiesel and that the Commission should take this into account in its analysis, notably by considering as input the soybean oil, on which Argentina enjoys a natural competitive advantage.

(164) The Commission confirmed that it took into account this aspect in the calculation of the amount of subsidisation for the Argentinian sampled exporting producers. Indeed, the denominator of the benefit for the scheme was the turnover generated by the sales of soybean-based products, not only of biodiesel. Because of this, the Commission did not need to allocate the benefit received based on the end use of the soybeans purchased. Finally, since the sampled exporting producers were vertically integrated, the Commission did not need to account for any further steps in the value chain between the soybeans and the biodiesel and there was no provision of soybean oil which was claimed in the request and which could be analysed, since it was self-produced by the sampled exporting producers. Furthermore, in Section 3.3.1.3.3 of this Regulation, notably in Table 1, the Commission indeed analysed the role of soybean oil in the value chain between soybeans and biodiesel. Therefore, the claim was rejected.

⁽⁷⁰⁾ See the non-appealed judgment of 14 December 2022, *PT Wilmar Bioenergi Indonesia and Others v Commission*, T-111/20, EU:T:2022:809, para. 146.

(165) Following final disclosure, the GOA and CARBIO claimed that the export tax was a measure of fiscal policy of general application. The GOA stated that the sources on which the Commission based its findings reported in recital (115) do not confirm that its purpose was providing soybeans to the biodiesel industry for less than adequate remuneration. CARBIO recalled that export taxes predated the establishment of the biodiesel industry in Argentina in 2007 and have been used as a fiscal policy tool. CARBIO reported that they may even constitute a burden for exporting producers, which do not receive a reimbursement for them. As a consequence, any impact of the export tax on soybean prices and any benefit would have been a side-effect of the GOA's public revenue collecting activity and 'a mere by-product of government regulation' ⁽⁷¹⁾. Such an ordinary revenue collecting activity would not amount to the legal standard of 'a more active role of the government than mere acts of encouragement' ⁽⁷²⁾.

(166) The Commission recalled that in recital (116) it found that one of the objectives for which the GOA was empowered to levy export duties was to 'stabilize internal prices at convenient levels or maintain a volume of offers adequate to the supply needs of the internal market'. Moreover, recitals (117) to (123) sets out the evidence available showing that the export tax on soybeans was meant to ensure the provision of the raw material in particular to the biodiesel industry. Therefore, the Commission while recognising that the export tax on soybeans may have been used also as a fiscal policy tool, concluded that this was not its only objective. Insofar the Argentinian legislation showed that the State's objective of the export tax was the development of the downstream industry, notably the biodiesel industry, the impact of the export tax on prices is not a 'mere by-product' of the GOA's regulation, but the stated intent of the GOA. In this context, the fact that export taxes predated the establishment of the biodiesel industry in Argentina in 2007 does not deny the possibility that a policy tool is adapted or applied to new policy objectives subsequently arisen. In fact, the original investigation found that the reason for the change of the export tax rate in 2007 was precisely 'new productive uses, explicitly giving biofuels as an example' ⁽⁷³⁾. Therefore, this claim was rejected.

(167) Following final disclosure, CARBIO reiterated its comments set out in recitals (158) and (160) above. Similarly, the GOA reiterated its comments set out in recital (158). Both referred to the interpretation of Article 1.1(a)(1)(iv) of the SCM Agreement offered by the Panel in *US – Export Restraints*, according to which an export restraint 'cannot constitute government-entrusted or government-directed provision of goods in the sense of subparagraph (iv)' ⁽⁷⁴⁾. Both also mentioned that the Union expressly agreed with this case-law in its third-party submission in *US – Export Restraints* ⁽⁷⁵⁾. In addition, CARBIO claimed that export restrictions cannot constitute a means to entrust or direct private players within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In support, CARBIO referred to its interpretation by the General Court ⁽⁷⁶⁾ and to the interpretation of Article 1.1(a)(1)(iv) of the SCM Agreement by the Panel in *China – GOES* ⁽⁷⁷⁾, and in *US – Countervailing Measures (China)*, which explained that '[w]hen the Government of China limits the ability of domestic producers of magnesia and coke to export those products, it does not "give responsibility" to domestic producers to do anything' ⁽⁷⁸⁾. Consequently, CARBIO argued that export restraints cannot be considered as a financial contribution in the form of entrustment or directed. It followed that, in CARBIO's view, the export taxes, as well as the export restraints on maize and wheat, did not constitute countervailable subsidies.

⁽⁷¹⁾ T-300/16, *Jindal Saw and Jindal Saw Italia v Commission*, para. 117 and Appellate Body Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, p. 8131, para. 114.

⁽⁷²⁾ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 114.

⁽⁷³⁾ Commission Implementing Regulation (EU) 2019/244, rec. (93), as well as recs. (94)-(95).

⁽⁷⁴⁾ Panel Report, *United States – Measures Treating Exports Restraints as Subsidies*, WT/DS194/R and Corr.2, adopted 23 August 2001, DSR 2001:XI, p. 5767, paras. 8.38 and 8.75.

⁽⁷⁵⁾ Annex B-1: Executive Summary of Third Party Written Submission of the EC, WT/DS194/R, para. 17 and page 6.

⁽⁷⁶⁾ Judgment of the General Court of 10 April 2019, *Jindal Saw and Jindal Saw Italia v Commission*, T-300/16, ECLI:EU:T:2019:235, para. 108.

⁽⁷⁷⁾ Panel Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*, WT/DS414/R, and Add.1, adopted 16 November 2012, upheld by Appellate Body Report WT/DS414/AB/R, DSR 2012:XII, p. 6369, para. 7.85.

⁽⁷⁸⁾ Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R and Add.1, adopted 16 January 2015, as modified by Appellate Body Report WT/DS437/AB/R, DSR 2015:I, p. 183.

- (168) The Commission noted that it did not analyse only export restraints such as the export tax and the export restraints on maize and wheat, but a full set of measures including – but not limited to – those export restraints, described in recitals (101) to (150). This set of measures, taken together, allowed the GOA to entrust or direct soybean growers to comply with its policy objectives in a manner amounting to a countervailable subsidy as specified under Article 3(1)(a) of the basic Regulation. Therefore, claims applying to the export restraints alone are ineffective in the context of the analysis carried out by the Commission. Thus, these claims were rejected.
- (169) CARBIO took aim at the Commission's reference to the judgment in *PT Wilmar Bioenergi Indonesia and Others v Commission* in recital (159) above, in particular that it would support the Commission's statement that the Commission itself provided ample evidence that the export tax on soybeans was used as a tool, together with other instruments, to induce soybean growers to comply with the stated policy objectives in a manner amounting to a countervailable subsidy. CARBIO claimed that the judgment does not support this statement, especially because the export restrictions at issue in that judgement were linked to international prices.
- (170) The Commission considered that the judgment mentioned in recital (159) supports that the case-law of the General Court confirmed that the objective of export restraint systems may be to directly and indirectly support the biodiesel industry. However, it did not refer to that judgment in support of its finding in relation to the export tax on soybeans. Therefore, the claim was rejected.
- (171) In addition, the GOA, while acknowledging that the Commission correctly identified the different taxable base (i.e. the FOB price considered) for soybeans and soybean oil on the one side, and biodiesel on the other side, claimed that the Commission confused it with the taxable value (i.e. the value on which the export tax is calculated) and misconstrued the differential between the effective rate of the export tax on biodiesel and the rate of the export tax on soybeans and soybean oil in recital (113). According to the GOA, the Commission should have compared the effective rate of the export tax on biodiesel with an alleged effective rate of the export tax on soybeans and soybean oil, which was much lower. Indeed, according to the GOA, while the taxable base is different, the way of calculating the taxable value is the same for the three export taxes.
- (172) The Commission noted that the GOA provided contradictory information in this respect. The GOA itself, in reply to question C.II.22 of the questionnaire, explained that *'When goods are subject to Official Prices (for example, goods under Law No 21453 [i.e. soybeans and soybean oil]), the Taxable Value will be equal to the Official Price'*. It follows from this that the Commission correctly identified the taxable value for soybeans and soybean oil in the official FOB price, so that the export tax is levied directly on the official FOB price, without calculating an effective rate for soybeans and soybean oil. Thus, the differential described in recital (113) and reported in public sources is actually in place. Therefore, this claim was rejected.
- (173) The GOA also criticized the characterisation as 'irrational' of the situation of the soybean producers as a consequence of the GOA's measures in recital (123), faced with a healthy production foreseen in 2025.
- (174) The Commission noted that the irrational characterisation referred to the sales, rather than production, and rejected this claim.
- (175) Furthermore, the GOA claimed that the export balancing volumes on maize and wheat were not a support for the soybean producers but were rather aimed at mitigating market disturbances arising from Russia's military aggression to Ukraine. The GOA claimed further that, on the contrary, the Commission's analysis focused on the effects of the measure. Moreover, the GOA noted that it modified the balancing volumes upwards throughout the year, not downwards, which would have been the direction sought had the objective been to incentivise the production of soybeans. Finally, according to the GOA, the Commission did not consider that soybean producers are free to switch crops and that the quota was filled almost in sync with the timeframe of its validity.

(176) The Commission concluded in recital (136) that the export balancing volumes contributed to favouring the production of soybeans, rather than supporting them. Moreover, export balancing volumes were introduced by way of Resolution 276/2021, dated 16 December 2021, before Russia's military aggression to Ukraine in February 2022. Finally, the Commission did not countervail the export balancing volumes individually, but as part of a set of measures through which the GOA entrusted or directed soybean suppliers with the express objective of providing soybeans to the biodiesel industry for less than adequate remuneration. The modifications of the export balancing volumes were based on the domestic consumption and export needs. Thus, an upward adjustment of the volumes simply reflected a decreased domestic consumption and an increased export need. On the contrary, the objective of favouring the production of soybeans was shown by the very same imposition of the export balancing volumes on maize and wheat. It is noted that the imposition of the export balancing volumes happened following a period without export restrictions. During this period without export restrictions, the production of soybeans had decreased, whereas the production of maize and wheat had increased. The freedom to switch between crops reinforces the Commission's findings, since the production data in Graph 1 shows the strong correlation between production of soybean and export restrictions, as shown also by the producers' choice of crops in the period without restrictions. Finally, export balancing volumes retained a hard cap, as shown by the fact that the volumes were exhausted, so its very same existence favours the production of soybeans. Therefore, this claim was rejected.

3.3.1.3.2. Entrustment or direction of private bodies within the meaning of Article 3(1)(a)(iv) of the basic Regulation

(177) As in the original investigation, the Commission then assessed whether the soybean growers in Argentina are private bodies entrusted or directed by the GOA within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(178) The sampled Argentinian exporting producers were purchasing all of the soybeans used in the production of biodiesel from domestic sources. These were purchased from private soybean farms, apart from certain volumes of soybeans sourced from the State-owned company YPF SA.

(179) The GOA explained that Argentina has more than sixty thousand soybean farmers, spread across a vast area and producing under different economic and productive conditions, and claimed that they cannot be considered a private body entrusted or directed under Article 1.1(a)(1)(iv) of the SCM Agreement, but for the fact of being subject to the regulatory power of the State and to the fiscal policy it dictates, which is of general application.

(180) The Commission noted that the number or differences in location or production conditions do not speak in themselves against a finding of entrustment or direction. Rather, the fragmented structure of the soybean market speaks of weakness in the market balance, especially if compared to the few, vertically integrated biodiesel exporters (less than a dozen, according to the GOA), which are also the main soybean crushers, with far more market power. Moreover, the fiscal policy in question – the export taxes – is not of general application, but hits specific agri-food products and their derivatives, notably soybeans, soybean oil and biodiesel. Therefore, this claim was rejected.

(181) Therefore, as in the original investigation, the Commission considered that, on the basis of the information available, all soybean growers are private bodies which were entrusted by the GOA within the meaning of Article 3(1)(a)(iv) of the basic Regulation to provide soybeans for less than adequate remuneration.

3.3.1.3.3. Provision of soybeans by soybean growers for less than adequate remuneration

(182) In the original investigation, the Commission investigated whether the soybean growers actually carried out the Argentinian governmental policy to provide soybeans for less than adequate remuneration.

(183) The Commission undertook the same analysis updating the data collected at the time. In line with the conclusions reached in recital (85), the Commission had to partially use facts available pursuant to Article 28 of the basic Regulation to determine whether there had been a provision of soybeans by soybean growers for less than adequate remuneration.

(184) Through the set of measures described in recitals (101) to (150), the GOA induced the soybean growers to sell locally at lower prices than otherwise i.e. absent those measures, the soybean growers would have exported the soybeans at the much higher world market price or simply they would have adjusted their supply to the market constraints. In contrast, the soybean growers did not do so because of the GOA's policy to boost the development of the downstream biodiesel industry.

(185) As demonstrated in Table 1, practically all of the domestic production of soybeans is further processed into soybean oil through crushing. The data concerning production, export, import and domestic crushing of soybeans over the years are as follows:

Table 1

Argentinian soybean, soybean oil and biodiesel production

	Soybean production (MT)	Soybean exports (MT)	Soybean imports (MT)	Soybean crushing (MT)	Soybean oil production (MT)	Domestic consumption soybean oil (MT)	Biodiesel production (MT)
2020	48 780 412	6 640 000	4 930 000	42 680 000	7 160 243	1 791 370	1 157 364
2021	46 217 911	5 500 000	4 430 000	45 840 000	8 392 043	2 524 210	1 723 665
2022	43 861 066	5 540 000	4 570 000	39 940 000	7 447 690	2 890 010	1 909 618
2023	25 044 982	2 000 000	10 000 000	38 500 000	5 270 048	1 887 864	831 269

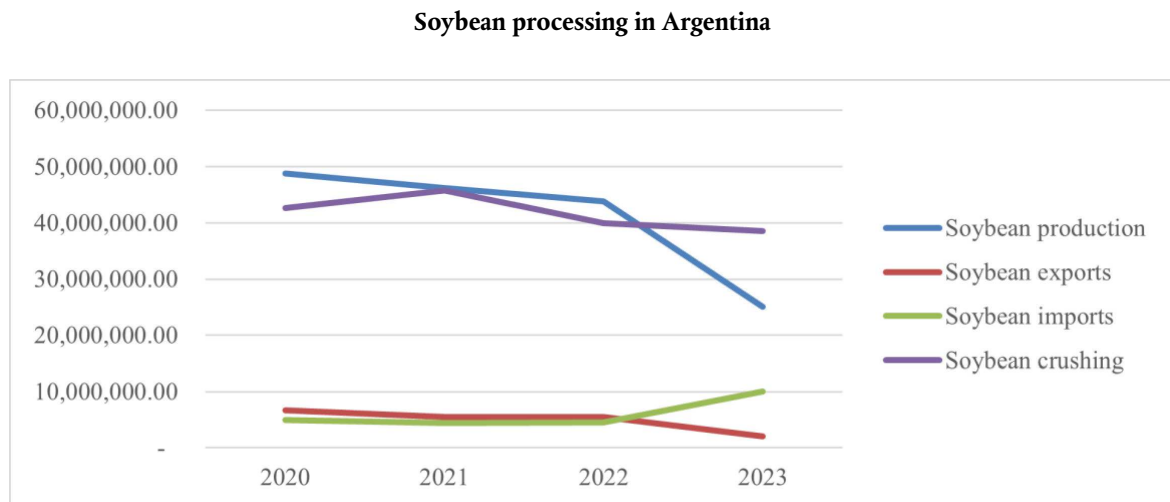
Source: GOA's questionnaire reply, coming from different publicly available Argentinian databases ⁽⁷⁹⁾. Only biodiesel production data for October to December 2023 were retrieved from the following link: <http://datos.energia.gob.ar/dataset/estadisticas-de-biodiesel-y-bioetanol/archivo/4e04bc74-8625-412c-acc2-48412f2509b4>. Data for December 2023 were still provisional.

(186) As explained in recital (133), the decrease in soybean production up to 2022 was due to the removal of export quotas on maize and wheat coupled with trade defence measures by the European Union, the US and Peru. The following drop in 2023 was due to a significant drought in Argentina. In 2024, after the drought soybean production recovered and increased compared to pre-drought production in 2022.

⁽⁷⁹⁾ Data reported for soybean crushing referred to crushing and other uses, according to the GOA's questionnaire reply, and they were retrieved from the monthly *Estimaciones Agrícolas* published by the Secretariat of Agriculture, Livestock and Fisheries of the Ministry of Economy (<https://www.magyp.gob.ar/sitio/areas/estimaciones/estimaciones/informes/>). In order to identify the volumes of crushing alone, the Commission resorted to other official data published in the monthly *Industrialización de granos* by the Secretariat of Agriculture, Livestock and Fisheries of the Ministry of Economy (<https://www.magyp.gob.ar/sitio/areas/gestion/>). However, these data showed higher volumes for crushing (*industrialización*) alone for certain harvesting years (April to March) compared to the set of data used by the GOA. Therefore, since most of the soybean consumption resulted devoted to crushing and in order to preserve the consistency and comparability of the data presented in Table 1, the Commission used the data submitted by the GOA for crushing and other uses as referring to crushing alone, taking into account that they might be underestimated.

(187) The trend is shown in Graph 2 below (in MT):

Graph 2



Source: data provided in Table 1.

(188) Table 1 and Graph 2 demonstrate that practically all of the soybean production went into crushing and the domestic consumption of the resulting soybean oil was predominantly used for the production of biodiesel. Moreover, even when faced with low production resulting from the drought of 2023, Argentina imported more soybeans in order to fill its crushing capacity.

(189) Moreover, exports of soybeans only take place when domestic consumption for both soybean crushing and production of biodiesel is fully satisfied. Table 1 and Graph 2 also show the very limited imports of soybeans over the years of application of the export restraints, with the exception of the drought year 2023. This is also confirmed by the business model observed with the sampled exporting producers. Indeed, none of them imported soybeans for the production of biodiesel. Rather, they imported the soybeans exclusively for use in their crushing facilities and then exported all of the resulting soybean oil and meal outside Argentina.

(190) Consequently, the primary objective of the GOA's measures has been achieved: domestically produced soybeans have fully satisfied domestic demand for an input for domestic biodiesel production to the detriment of the soybean producers who could not optimise their profits by either exporting all of their produce or selling domestically at higher prices due to the export restraints.

(191) According to the relevant WTO case-law, in most cases there should be some form of threat or inducement by the government to the suppliers of inputs to evidence the existence of entrustment and direction. Leaving a margin of discretion does not automatically discard that finding. This case-by-case analysis is evidence-based. In this case, the fact that the exports are rather limited in a highly international commodity market whereby Argentina is one of the leading soybeans producers world-wide is remarkable, especially considering that the price in international markets is significantly higher than the domestic price in Argentina (see Graph 3).

(192) The evidence contained in the Argentinian legislation (see recitals (116) to (120)) shows that the GOA's policy objective is to develop and favour the higher added-value downstream industries, including biodiesel. In addition, the GOA clearly stated its objective to shield the downstream industries from the rise of international prices.

(193) It is also clear that the countless small soybeans farmers, even though not formally prevented by the GOA from exporting their products, are induced by these policies to sell domestically almost all of their production and at lower prices than they would have otherwise achieved in the international markets. There is no evidence on file that the GOA is in any way trying to encourage and/or actively support directly or indirectly an increase of exports and hence a maximisation of profits for the soybean farmers despite the known difficulties of small farmers to find clients abroad, communicate in a foreign language, and arrange all the burdensome administrative formalities for exports.

(194) In the absence of other evidence to the contrary on file, and given the lack of sufficient cooperation by the GOA to provide relevant evidence and information in this respect, the Commission concluded that this evidence shows the inducement of soybean growers to sell their production domestically for the benefit of the downstream industries (including the biodiesel producers) rather than maximising their returns, such as by finding other ways such as adapting their production output or even switching to other type of production (e.g. other grains).

(195) The fact that there is still some degree of discretion for soybean growers to sell abroad at least formally and that very limited exports did take place does not undermine the main conclusion on the existence of their entrustment or direction in line with the WTO case-law⁽⁸⁰⁾.

(196) Further, as in the original investigation, the Commission analysed the impact of the supply of soybeans due to the GOA's measures on the domestic price of soybeans in Argentina.

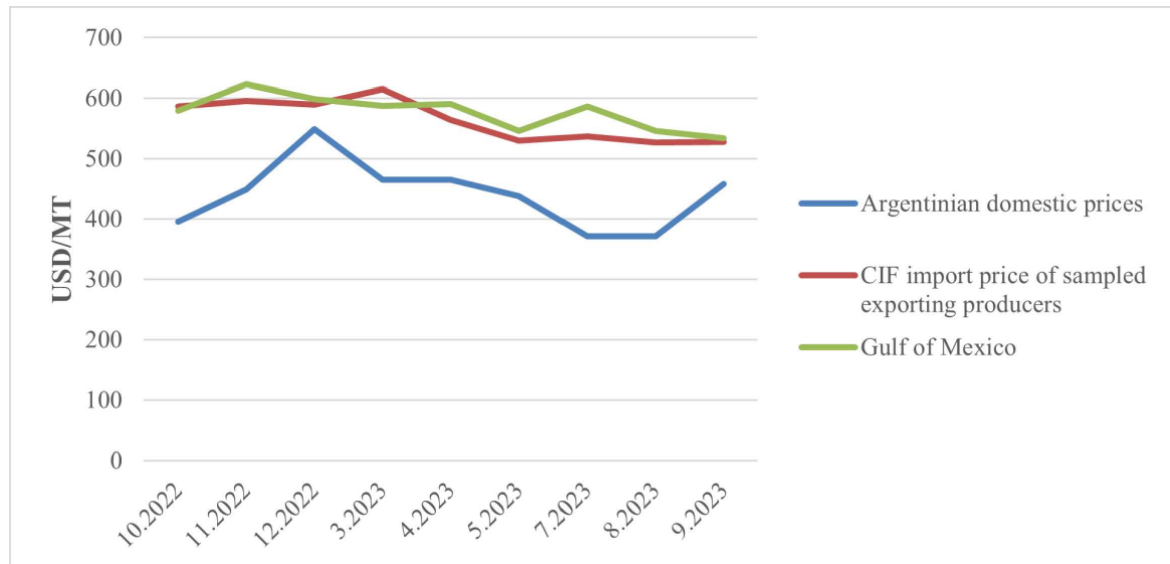
(197) The Commission used the average domestic price of soybeans in Argentina which is based on monthly data from Buenos Aires Grain Exchange for Rosario, Bahia Blanca, and Quequen provided by the GOA.

(198) As in the original investigation, the sampled exporting producers did import some soybeans. Although the companies did not use these imports for the production of biodiesel – they were used to make soybean oil which was then exported, the price of these imports could be considered representative, as the soybeans were imported to be crushed and re-exported as soybean oil and their price mirrored the world market price of soybeans (Gulf of Mexico).

(199) Graph 3 below shows the price fluctuations over the review investigation period (except months where no domestic price was reported) and the price difference between the Argentinian domestic price and the world market price.

⁽⁸⁰⁾ Panel Report, DS 296, *US – Countervailing Duty Investigation on DRAMS*, paragraph 7.38. While the Panel Report was appealed, this conclusion in particular, was not appealed.

Graph 3

Argentinian domestic price versus world market price

Source: GOA's questionnaire reply for Argentinian domestic price, sampled exporting producers' questionnaire replies for their import price, and Gulf of Mexico index as reported on the website of the Secretariat of Agriculture, Livestock and Fisheries (https://www.magyp.gob.ar/sitio/areas/ss_mercados_agropecuarios/areas/granos/_archivos/000057_Precios%20Internacionales/_series/_golfo_mex/golfo_mexico.php).

(200) Graph 3 shows a price difference between the Argentinian domestic price and the world market price, as well as the CIF import price of the sampled exporting producers, throughout the review investigation period. The directing policy of the GOA prevents the soybean growers from realising profits based on world market prices. The soybean growers are effectively deprived of a rational choice to sell on international markets at much higher prices.

(201) Instead, they are achieving comparable profits on both the domestic and international market, at the expense of reducing domestic prices by the amount of the export tax. Thereby, the GOA suppresses the domestic prices to the benefit of the domestic processing industry.

(202) The GOA directs by withholding a rational choice from the soybean growers. In addition, as can be observed from the chart, the price difference between domestic prices and international prices has not only remained consistent throughout the review investigation period but has also shielded the biodiesel industry and all other downstream industries (such as the crushers, mainly integrated with biodiesel producers) from the higher prices on the international market.

(203) Consequently, the GOA's set of measures achieved its pre-defined goal, namely, to reduce domestic prices in the context of rising international prices to the benefit of the domestic value-added industry, including biodiesel.

(204) In light of the foregoing, the Commission concluded that the soybean growers in Argentina were entrusted or directed to provide soybeans to the domestic biodiesel industry for less than adequate remuneration.

(205) Following the final disclosure, CARBIO claimed that, in the current expiry review, the Commission did not conclude that soybean producers would not be at liberty to set the price of soybeans, contrary to the original investigation ⁽⁸¹⁾. CARBIO noted that the sampled exporting producers explained during the verification that in the soybean market buyers and sellers transact and set prices freely. Moreover, CARBIO argued that the export tax did not deprive soybean suppliers of their rational choice and did not undermine their ability to export, as shown by Table 1 and by recital (195). Finally, growers remained free to decide which crops to grow.

(206) To the contrary of what was claimed, the Commission concluded in recital (161) that, as in the original investigation, the domestic price of soybeans remained below the world market price and that soybean producers were not free to set the export price due to the export tax. The explanations by the sampled exporting producers did not contradict these two findings. Moreover, the Commission has already explained in recitals (161) and (193) to (195) how the soybean producers' degree of discretion was constrained by the GOA. Finally, the freedom to decide which crops to grow did not prevent the Commission from concluding in recital (135) above that the export balancing volumes contributed to favouring the production of soybeans over maize and wheat. Therefore, these claims were rejected.

(207) The GOA claimed that the lack of evidence of the GOA's action to support soybean producers' export activity should not be equated to evidence of the contrary. Moreover, according to the GOA, the Commission did not take into account that the international commodity market is complex, and soybean producers do not engage in it directly but rather through traders.

(208) The Commission noted that its finding concerned the soybean producers' degree of discretion constrained by the GOA, based on positive evidence collected in the context of the investigation – rather than the absence of it – and the GOA has not provided any further evidence following final disclosure. The fact that the international commodity market is generally accessed through traders should not prevent exports by soybean producers. Indeed, Argentinian biodiesel exporting producers generally export through traders. Therefore, this claim was rejected.

3.3.1.3.4. The function which would normally be vested in the government and the practice, which, in no real sense, differs from practices normally followed by governments

(209) As found in the original investigation ⁽⁸²⁾, the Commission considered that the provision of soybeans located on Argentinian soil to the Argentinian biodiesel industry is a function normally vested in the government, based on the fact that, under general international law, States have sovereignty over their natural resources. Rather than providing the inputs directly to the biodiesel industry in order to achieve the GOA's public policy objectives of boosting the development of the biodiesel industry, including its export potential, the GOA through a set of measures induces private entities to do so on behalf of the GOA, thus performing a function which in no real sense differs from practices normally followed by governments and involving sacrificing revenue.

(210) Following the final disclosure, the GOA claimed that the provision of soybeans was not a function normally vested in the government, because the GOA did not participate in the activities concerning the production of soybeans. Similarly, CARBIO claimed that the Commission failed to provide any evidence showing that decisions taken by privately owned suppliers on the production and sales of soybeans, cultivated on privately owned land in Argentina, reflect a function that is normally vested in the GOA. According to the GOA and CARBIO, the mere fact that a State may exercise regulatory powers regarding natural resources within its territory does not mean that the provision of those natural resources to private businesses is also a function normally vested in the government. On the contrary, commercial exploitation, distribution, and sale of natural resources is a function which is normally vested in private enterprises, with the role of the State being limited to regulation and oversight. In other words, while the regulation and oversight of natural resources is a function which is normally vested in the government, directly engaging in the provision of natural resources to private entities is not.

⁽⁸¹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (125).

⁽⁸²⁾ Commission Implementing Regulation (EU) 2019/244, rec. (164).

(211) First, concerning the arguments that the GOA did not participate in the soybean production, that suppliers are privately owned and that they sell soybeans cultivated on privately owned land, the Commission noted that the GOA entrusted or directed soybean producers to achieve a particular policy objective. Such provision of soybeans by the entrusted soybean producers did not differ from a situation where the GOA itself was the producer of the soybeans directly. Moreover, the Commission disagrees with the artificial distinction made by CARBIO, whereby commercial exploitation, distribution and sale of natural resources is not a function normally vested in the government, which is limited to regulate and oversee natural resources. The consequences of such an approach would be that the provision of goods or services for less than adequate remuneration could never be considered a function vested in the government, because the function of the State would be simply to regulate the provision of such good or service. The Commission did not accept such a distinction and considered that, precisely thanks to the exercise of the GOA's regulatory powers in the provision of soybeans, such provision of soybean can be treated as a function normally vested in the government. In this context, the fact that the recipients of this good are private entities rather than State-owned does not impact this conclusion, as it is irrelevant for the policy objective of developing the biodiesel industry. Therefore, this claim was rejected.

3.3.1.3.5. Conclusion on financial contribution

(212) Through a set of measures, including export taxes, quantitative restrictions, subsidies to domestic producers, and public policy statements, the GOA induced the domestic soybean growers to sell soybeans locally and 'entrusted' or 'directed' them to provide this raw material in Argentina for less than adequate remuneration. The measures at issue achieved the desired effect to distort the domestic market of soybeans in Argentina and to depress the price to an artificially low level to the advantage of the downstream biodiesel industry. The function to provide soybeans for less than adequate remuneration is normally vested in the government in view of the public objective to support the biodiesel industry. Moreover, the practice of the soybean growers to carry out this function does not, in any real sense, differ from practices normally followed by governments when pursuing similar policy objectives through other forms of support (such as grants or revenue foregone).

(213) The Commission thus concluded that the GOA provided an indirect financial contribution within the meaning of Article 3(1)(a)(iv) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) of the SCM Agreement.

3.3.1.4. Income or price support

(214) In the original investigation, the Commission considered that the categories of 'financial contribution' and of 'income or price support' were not mutually exclusive⁽⁸³⁾. In line with this interpretation, in addition to examining whether the set of measures adopted by the GOA could be characterised as 'financial contribution' in the form of provision of goods for less than adequate remuneration, the Commission also analysed whether the GOA's set of measures could also be characterised as income or price support falling under Article 3(1)(b) of the basic Regulation⁽⁸⁴⁾.

(215) As indicated in the memorandum on sufficiency of evidence, the Commission considered that in the current expiry review the applicant brought evidence alleging that the GOA's set of measures could also be characterised as income or price support under Article 3(1)(b) of the basic Regulation. Therefore, the Commission first examined whether the GOA continued to show the intention to support the creation and development of the biodiesel industry; second, what kind of measures the GOA adopted or continued to adopt during the review investigation period to support the biodiesel industry; and third, whether those measures qualified as 'any form of income/price support' in the sense of Article XVI of GATT 1994.

⁽⁸³⁾ Commission Implementing Regulation (EU) 2019/244, recs. (171)-(176).

⁽⁸⁴⁾ Commission Implementing Regulation (EU) 2019/244, rec. (177).

3.3.1.4.1. The GOA's intention to support the domestic biodiesel industry

- (216) In the original investigation, in the context of the income or price support analysis, the Commission reported the legislation showing the GOA's intention to support the biodiesel industry, notably Decree 1396/2001⁽⁸⁵⁾ Resolution 1156/2004⁽⁸⁶⁾ and the 2006 Biofuels Law.
- (217) In the current investigation, in addition to the elements highlighted in the context of the export tax in recitals (117) to (122) and to the conclusion reached with respect to the export balancing volumes on maize and wheat in recital (136) and to the subsidies to soybean growers in recital (150), the Commission investigated whether the subsequent legislation showed that the GOA had an explicit policy to support the development of the domestic biodiesel industry. During the review investigation period the 2006 Biofuels Law was no longer in force and was replaced by the 2021 Biofuels Law which regulated the domestic biodiesel mandate.
- (218) In recital (38), the Commission already recalled the functions of the Secretariat of Energy, the enforcement authority under the 2021 Biofuels Law. For the purposes of the income or price support analysis, the Commission recalls that the Secretariat of Energy's role to *'Guarantee the availability of the necessary inputs for the preparation of biofuels for the mandatory blending, being able to arbitrate and establish the mechanisms it deems necessary so that the acquisition of those is carried out according to the normal and usual conditions of the market and without any distortion, establishing as a limit, where applicable, the export price of such inputs less the respective costs'*⁽⁸⁷⁾. This function shows that the GOA conceived the production of soybeans in relation to the production of biodiesel, and for the purpose of ensuring sufficient supply for it. For these purposes, the GOA was empowered to establish a maximum price for the inputs for the biodiesel sold within the domestic mandate corresponding to the export price of such inputs, once discounted the relevant costs. In other words, the price of the inputs destined to the domestic market would have been cheaper than the price of the inputs destined to the export market. It is therefore evident from this provision that the GOA's intention in the 2021 Biofuels Law was to support the domestic biodiesel industry.
- (219) This is further and expressly confirmed by Article 16 of the 2021 Biofuels Law, meaningfully entitled 'Import substitution', which empowers the Secretariat of Energy to *'replace the import of fossil fuels with biofuels'* and to *'promote investments for the industrialization of national raw materials'*⁽⁸⁸⁾. As confirmed by the GOA during the on-spot verification, industrialization (*industrialización*) in the context of the soybean value chain refers to the crushing itself. Therefore, in practice, Article 16 of the 2021 Biofuels Law refers to the promotion of investments in the crushing of soybeans to foster the production of biodiesel. This constitutes another means of support for the domestic biodiesel industry.
- (220) Moreover, the assessment of the setting of the domestic price of biodiesel in the original investigation⁽⁸⁹⁾ remained valid during the review investigation period. Indeed, pursuant to the 2021 Biofuels Law, during the review investigation period the GOA continued to set the price of the biodiesel sold domestically within the biodiesel domestic mandate, which constitutes almost the entire domestic market for biodiesel.
- (221) During the review investigation period, the domestic price of biodiesel was set almost on a monthly basis, with no differentiation between type of companies, and was publicly available⁽⁹⁰⁾.

⁽⁸⁵⁾ Decreto 1396/2001, *Plan de Competitividad para el Combustible Biodiesel. Modificaciones al Impuesto sobre los Combustibles Líquidos y el Gas Natural. Normas Complementarias.*

⁽⁸⁶⁾ *Secretaría de Agricultura, Ganadería, Pesca y Alimentos, Resolution 1156/2004, Biocombustibles, Créase el Programa Nacional de Biocombustibles. Principales objetivos. Misiones y funciones.*

⁽⁸⁷⁾ Article 3, 2021 Biofuels Law.

⁽⁸⁸⁾ Article 16, 2021 Biofuels Law.

⁽⁸⁹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (192)-(195).

⁽⁹⁰⁾ https://glp.se.gob.ar/biocombustible/reporte_precios.php.

- (222) None of the sampled exporting producers received a quota and supplied the domestic market during the investigation period (though other biodiesel producers in the Renova Group did). However, the prices set by the GOA on the domestic market appear to be higher than the average FOB export price of the sampled exporting producers, in the periods with the same domestic price – within the review investigation period – when they reported export sales, considering the FOB export price both net of export tax on biodiesel and, except for two periods where domestic and export prices were aligned, including the export tax on biodiesel.
- (223) Therefore, by artificially setting the price of domestic biodiesel at an artificially high level, the GOA pursued a policy of providing price support to the small and medium-sized biodiesel industry selling on the domestic market.

The GOA's explicit support at national and provincial level to the biodiesel industry

- (224) Moreover, the applicant indicated as evidence of the continued support by the GOA to the biodiesel industry (i) the financing programme for working capital in the biodiesel industry pursuant to Resolution 947/2023 ⁽⁹¹⁾; and (ii) the revenue foregone through the 2021 Biofuels Law.
- (225) These constitute new alleged schemes concerning biodiesel producers and the Commission analysed them under the respective sections below in order to establish whether a benefit accrued under these schemes. However, for the purpose of understanding whether they showed evidence of the GOA's support for the biodiesel industry, the Commission analysed their legal bases – in force during the review investigation period – and a public statement on them. Evidence from the 2021 Biofuels Law was reported in recitals (218) and (219) above. Moreover, as explained in recitals (313)-(314), Article 22 of the 2021 Biofuels Law appeared to provide for a tax exemption from the liquid fuel tax and the carbon dioxide tax applicable only to biodiesel of national origin blended in fuels. During the on-spot verification, the GOA appeared to share this view. However, the GOA's questionnaire reply seemed to suggest that, instead, pursuant to Article 4 of Title III of Law 23966 ⁽⁹²⁾, the biodiesel blended in fuels, whether of national origin or imported, is never subject to the liquid fuel tax and the carbon dioxide tax, such taxes being levied only on the gasoline, gasoil or diesel component of the blended fuel, irrespective of whether such component or the blended biodiesel is of national or imported origin. Indeed, no rate was provided for biodiesel in Article 4, in contrast with other fuels. It remained thus unclear whether there was a discrimination in the tax levy based on the origin of the biodiesel.
- (226) As explained in recital (315) below, it was not possible to calculate a benefit under this scheme as it was apparent that this tax was levied on the blended fuel resulting after the blending further down the value chain, and not at the level of the biodiesel producers. However, the fact in itself that biofuels, including biodiesel (expressly mentioned in Article 4 of Title III of Law 23966), are subtracted to the scope of application of the liquid fuel tax and the carbon dioxide tax speaks of the clear GOA's intention to favour biodiesel consumption, notably of biodiesel of national origin, and to support thus the biodiesel domestic industry.
- (227) As concerns, instead, the financing programme for working capital in the biodiesel industry, its declared aim was 'to offer better financing conditions for the acquisition of the necessary inputs for the production of biodiesel for mandatory blending with diesel under Law 27,640' ⁽⁹³⁾. On the occasion of a ceremony for the implementation of the program, the president of the Banco de la Nación Argentina ('BNA'), one of the country's largest banks and entirely State-owned, explicitly stated that the aim of the credit was 'to create more jobs and to be able to continue exporting, as well as saving foreign exchange' ⁽⁹⁴⁾. It follows that there is no doubt as regards the fact that the

⁽⁹¹⁾ Ministerio de Economía, Resolución 947/2023, RESOL-2023-947-APN-MEC.

⁽⁹²⁾ Ley N° 23.966, Financiamiento del Regimen Nacional e Prevision Social. Afectacion del I.V.A.. Impuesto sobre Combustibles Liquidos y Gas Natural. Modificaciones a la Ley del Fondo Nacional de la Vivienda. Derogacion de Regimenes de Jubilaciones Especiales. Impuesto sobre los Bienes Personales no incorporado al Proceso Economico. Destino de los recursos de privatizaciones. Modificacion de la Ley de Tasas Judiciales.

⁽⁹³⁾ Article 1, Resolution 947/2023.

⁽⁹⁴⁾ <https://biodiesel.com.ar/16276/biocombustibles-la-secretaria-de-energia-de-argentina-lanza-credito-a-tasa-preferencial-para-la-industria-del-biodiesel>.

financing program forking capital in the biodiesel industry was meant to support the biodiesel industry by offering better financing conditions, and specifically to support exports of biodiesel. While in recital (311) below the Commission concluded that the sampled exporting producers did not benefit from the financing programme, the scheme was in force during the review investigation period for eligible biodiesel producers, and therefore it constituted valid evidence for the purposes of the income or price support.

(228) Moreover, the applicant alleged that several actions of provincial administration showed that the support for the biodiesel industry was present also at provincial level.

(229) In particular, the applicant reported that, first, the province of Santa Fe launched a program aiming for all public buses to use biodiesel in its pure form (B100) ⁽⁹⁵⁾.

(230) Second, the province of Cordoba, announced the financing of credits for the promotion of local production and consumption of biodiesel ⁽⁹⁶⁾.

(231) Third, again the province of Cordoba implemented its biofuel promotion policy through the Provincial Law 10721 ⁽⁹⁷⁾, intended to consolidate the production of biodiesel and promote the replacement of fossil fuels with biodiesel. Provincial Law 10721 sets several objectives, including the consolidation of the production of biofuels and 'To promote the progressive replacement of fossil fuels through [...] *preferential consumption of biofuels*, tending to their massive use' (emphasis added) ⁽⁹⁸⁾.

(232) All these measures at provincial level intervened after the original investigation.

(233) As regards the new measure taken by the province of Santa Fe, it was meant to foster the 'massive use of biofuels (biodiesel [...])' ⁽⁹⁹⁾, throughout a variety of economic sectors, including notably the public transport and fleet. Besides requiring public transport and vehicles used in fulfilment of public tenders to use biodiesel in its pure form (B100) as fuel, the Santa Fe Provincial Law 14010 foresaw the possibility of granting 'exemption and/or reduction of gross income tax, stamp tax and/or single vehicle tax' to companies which contributed to the purposes of the Santa Fe Provincial Law 14010 ⁽¹⁰⁰⁾. This contribution was measured based on the investments made by these companies in order to increase the use of biodiesel in their activities. Thus, the Santa Fe Provincial Law 14010, by rewarding through tax exemptions the investments made by private companies, actively fostered the use of biodiesel (and, thus, the sales of biodiesel in the province) in many economic sectors in the province. Therefore, while the tax exemptions of the province of Santa Fe from which biodiesel producers benefitted were specifically analysed in recitals (270)-(289), for the purposes of income or price support the Santa Fe Provincial Law 14010 showed the implementation at provincial level of the GOA's intention to support to the biodiesel industry.

(234) As regards the new measures taken by the province of Cordoba, in the request, the applicant acknowledged that evidence of subsidies from the province of Cordoba were rejected in the original investigation, on the grounds that the sampled exporting producers did not benefit from provincial laws of Cordoba ⁽¹⁰¹⁾. Nonetheless, the applicant supported that these elements remained of interest since they showed the local application of a national policy on biofuels and could be relevant in the event the sampled producers differ for the expiry review investigation.

⁽⁹⁵⁾ Ley provincial 14010, *Creación del Programa Provincial de Uso Sustentable de Biocombustibles* ('Santa Fe Provincial Law 14010').

⁽⁹⁶⁾ <https://biodiesel.com.ar/15931/powerbioempresa-lider-en-la-fabricacion-de-plantas-de-biodiesel-que-acompana-el-programa-de-autocomsumo-de-biodiesel-100-que-impulsa-el-gobierno-de-cordoba>.
<https://biodiesel.com.ar/15931/powerbioempresa-lider-en-la-fabricacion-de-plantas-de-biodiesel-que-acompana-el-programa-de-autocomsumo-de-biodiesel-100-que-impulsa-el-gobierno-de-cordoba>.

⁽⁹⁷⁾ Ley provincial 10721, *Ley de Promoción y Desarrollo para la Producción y Consumo de Biocombustibles y Bioenergía* ('Cordoba Provincial Law 10721').

⁽⁹⁸⁾ Article 2(n), Cordoba Provincial Law 10721.

⁽⁹⁹⁾ Article 1, Santa Fe Provincial Law 14010.

⁽¹⁰⁰⁾ Article 5, Santa Fe Provincial Law 14010.

⁽¹⁰¹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (281).

(235) The Commission noted that, while the sample changed compared to that one of the original investigation, no sampled exporting producer in the current expiry review produced biodiesel in the province of Cordoba. Therefore, they could not benefit from the schemes indicated here. However, the subsidies granted by the province of Cordoba that the applicant requested the Commission to re-investigate were different from those reported here and are addressed in recitals (297) to (299) below. The sampled exporting producers in the current expiry review could not benefit from the subsidies reported here either, since they were not located in the province of Cordoba. However, it cannot be excluded that other biodiesel producers located in the province of Cordoba could have benefitted from these in the review investigation period. Therefore, for the purposes of income or price support only, the Commission considered that these measures showed the implementation at provincial level of the GOA's intention to support to the biodiesel industry.

Conclusion on the GOA's intention to support the biodiesel industry

(236) Therefore, the Commission concluded that the GOA's intention to support the development of the Argentinian biodiesel industry continued to be manifest also during the review investigation period.

3.3.1.4.2. Supporting measures to the biodiesel industry

(237) As discussed in recitals (216) to (236), the GOA's intention to support the biodiesel industry was evident in a series of measures, including artificially distorting the soybean domestic market, the price setting of the biodiesel sold within the domestic mandate, the financing programme for working capital in the biodiesel industry pursuant to Resolution 947/2023, the revenue foregone through the 2021 Biofuels Law, and the measures enacted by the provinces of Santa Fe and Cordoba. Those measures directly or indirectly supported the income of biodiesel producers. Moreover, with the 2021 Biofuels Law the GOA continued the promotion regime for the production of biodiesel already established under the 2006 Biofuels Law. Therefore, the Commission concluded on the basis of the information available that in the years following the original investigation the GOA has continued to put in place a set of measures in order to develop and support the income of the biodiesel industry.

3.3.1.4.3. The set of measures adopted by the GOA qualifies as 'any form of income/price support' in the sense of Article XVI of the GATT 1994

(238) By the set of measures described in recitals (216) to (236), the GOA provides income support to the biodiesel industry.

(239) Moreover, the GOA has continued through the 2021 Biofuels Law a mandatory blending requirement whereby blending companies in Argentina have to purchase biodiesel at artificially high prices set by the GOA, providing price support to the biodiesel industry.

(240) All those measures show that the Argentinian biodiesel industry is supported and artificially stimulated.

(241) Therefore, the Commission concluded that through the set of measures mentioned above the GOA directly or indirectly provides income or price support to the biodiesel industry, thereby contributing to its competitiveness.

(242) As found in the original investigation, by regulating the domestic biodiesel market and giving a quota only to the smaller biodiesel companies, the GOA established an industry where the largest producers are prevented from selling domestically and thus are fully export-oriented, thereby encouraging the export competitiveness of the biodiesel industry⁽¹⁰²⁾.

⁽¹⁰²⁾ Commission Implementing Regulation (EU) 2019/244, rec. (199).

Table 2

Argentinian production and export of biodiesel (MT)

Year	Production	Total exports	Exports to the Union	Exports to third countries	Exports (% of production)
2020	1 157 364	597 205	596 892	313	52 %
2021	1 723 665	1 269 570	1 269 228	342	74 %
2022	1 909 618	1 236 410	1 236 180	230	65 %
RIP	1 184 444	575 304	555 283	20 021	49 %

Source: GOA's questionnaire reply, coming from different publicly available Argentinian databases.

(243) As shown in Table 2, the biodiesel industry continued to be an export-oriented industry. Indeed, since 2020, up to 74 % of production was exported, depending on the year, and during the review investigation period almost half of the production was exported. The sampled exporting producers explained that during the review investigation period (during which the undertaking was in force) prices in the Union, their only export destination during the review investigation period, were low and they generally exported only when prices were sufficiently high compared to the minimum import price in force pursuant to the undertaking, in order to make profits. At the same time, until mid-October 2022 the higher biodiesel mandate (12,5 %) and the possibility to supply the additional mandate also for companies ordinarily not involved in the domestic mandate meant that a higher part of production went into domestic consumption rather than in export. For this reason, the percentage of exports over production is lower compared to previous years. A similar situation can be observed in 2020, when the biodiesel mandate was 10 % under the 2006 Biofuels Law, before that in 2021 the 2021 Biofuels Law lowered it to 5 % (subsequently raised to 7,5 % as of June 2022). In this perspective, a higher biodiesel mandate implies a higher domestic consumption, whereas a lower biodiesel mandate acts as a push to export. As a consequence, the GOA, by lowering the biodiesel mandate under the 2021 Biofuels Law, directed the Argentinian biodiesel industry even more towards exports. The lower levels of production and total exports in absolute terms during the review investigation period were due to an overall drop in production due to the drought in Argentina, affecting the biodiesel's feedstock, i.e. the soybeans.

(244) Therefore, the support to the domestic biodiesel industry favoured exports of biodiesel whereby the biodiesel producers were able to unfairly compete with biodiesel producers in other countries not benefiting from lower input prices. The Argentinian biodiesel industry continued having export markets, and in particular the Union market, as its main focus.

3.3.1.4.4. Conclusion on income or price support

(245) The GOA claimed that the qualification of export taxes as income or price support to the biodiesel industry was in contradiction with the role of the export tax on biodiesel in the entrustment or direction, as it decreased the prices obtained by the biodiesel industry.

(246) The Commission noted that the entrustment or direction analysis focused on the export tax on soybeans, and not on biodiesel, and on the consequences on the provision of soybeans for less than adequate remuneration, leading to lower costs and higher profits/income being made as a result. It is thus that same export tax, as well as other support measures, which contributed to the provision of income or price support by the GOA. Therefore, this claim was rejected.

(247) Therefore, the Commission concluded that through a set of measures, the GOA directly or indirectly continued to provide income or price support to the biodiesel industry within the meaning of Article 3(1)(b) of the basic Regulation, resulting in the export of most of the domestic production.

- (248) Following the final disclosure, the GOA claimed that most of the measures supporting the income or price support finding relate to the domestic market, in which biodiesel exporters were not allowed to participate. This applied notably to the finding in recital (218) with respect to the 2021 Biofuels Law, which ensures inputs for the production of biodiesel for the domestic market. The GOA also claimed that the Secretariat does not have authority over soybeans, because it is not a direct input for biodiesel, and that the price limit applies to the inputs for elaboration of the biodiesel within the mandate and not to the biodiesel itself. Such price limit applied only if market conditions for purchasing the inputs were not applicable.
- (249) The Commission disagreed. Indeed, the investigation revealed that individual companies within the groups of the sampled exporting producers participated in the biodiesel domestic market. Furthermore, the 2021 Biofuels Law affect the exporters because it prohibits the exporting entities to participate in the domestic market and therefore obliges them to export. In addition, the support for the supply of inputs for the production of biodiesel destined to the domestic market favours also individual companies within the groups of the sampled exporting producers. As regards the authority of the Secretariat over inputs for the biodiesel, the GOA did not explain what the purpose of this legal provision is, if not the security of supply and price limit of soybeans. The GOA did not specify what are the inputs different from soybeans to which the legal provision referred. Finally, the biodiesel sold within the mandate was already sold at a government-regulated price and did not need an additional price limit established by the Secretariat. Therefore, this claim was rejected.

3.3.1.5. Benefit

- (250) Having established that the set of measures described in recitals (101) to (150) above constitutes a financial contribution by the GOA by means of entrustment or direction of private bodies and/or that the set of measures described in recitals (216) to (236) constitutes income/price support, the Commission calculated the amount of subsidisation in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period, in accordance with Article 3(2) and Article 5 of the basic Regulation.
- (251) As in the original investigation, and because most of the GOA's measures aimed at artificially lowering the domestic price of soybeans resulting in higher income for Argentinian biodiesel producers, the Commission examined whether the GOA's support to the biodiesel industry conferred a benefit by reference to the difference between the prices paid by domestic biodiesel producers and a benchmark based on the prevailing market conditions in Argentina for soybeans.
- (252) The Commission first calculated the weighted average purchase price of soybeans paid by the sampled Argentinian exporting producers during the review investigation period. The weighted average was calculated month-by-month and as delivered from the soybean growers to the biodiesel plant in Argentina.
- (253) The average purchase price was based on the prices, net of VAT, and quantities indicated in transaction-by-transaction listings of invoices submitted by the sampled Argentinian exporting producers and verified during the on-spot verification visits.
- (254) This average price needed to be compared with an appropriate benchmark. As in the original investigation, the Commission resorted to the monthly weighted average price of soybeans imported by the sampled exporting producers. Indeed, these were imported on a CIF basis and had on average the same price level regardless of the origin. The actual import prices delivered on CIF terms to the crushing plants were on the same price level as the world market price, which is quoted as Gulf of Mexico. Imports of soybeans represented a significant volume of the sampled exporting producers' purchases, namely 38 %, a higher percentage compared to the original investigation due to the drought affecting the review investigation period. Those purchases were spread over hundreds of transactions.

- (255) Therefore, the Commission considered that the actual prices paid by the sampled exporting producers for imported soybeans are considered to reflect undistorted market conditions in Argentina, including the generally applicable delivery charges included in the final price ⁽¹⁰³⁾.
- (256) The fact that those imports by the sampled exporting producers were not used for the production of biodiesel but for producing soybean oil does not alter this conclusion, because during the review investigation period the demand for soybeans for producing biodiesel in Argentina was fully covered by the domestic supply of soybeans. At the same time there are no differences in quality between the different soybeans available that would render the imported soybeans not usable for producing biodiesel. Consequently, the Commission considered that those purchases constituted an appropriate benchmark.
- (257) On that basis, the Commission used the actual price at which the sampled exporting producers imported soybeans into Argentina, which all came from neighbouring countries, as the closest possible proxy for undistorted Argentinian domestic prices for these products. As explained in recital (254), those prices were at the same level as world market prices.
- (258) The Commission then compared the price paid for domestically grown soybeans by the Argentinian producers with the weighted average actual import price for soybeans on a month-by-month basis. These imports were all done under a temporary importation regime and were therefore not subject to import duties. The actual price paid by the sampled exporting producers was considered to correspond to the prevailing market terms and conditions in Argentina.
- (259) The total amount of the difference represents the 'savings' obtained by the Argentinian producers of biodiesel which purchase soybeans in the Argentinian distorted market compared to the price which they would have paid in the absence of distortions. Ultimately, this total amount represents the benefit conferred on the Argentinian producers by the GOA during the review investigation period.
- (260) In accordance with Article 7(2) of the basic Regulation, the Commission allocated those subsidy amounts over the total turnover of the soybean-based production of the sampled exporting producers during the investigation period as appropriate denominator, because the subsidy granted a benefit to the entire production of soybean-based products and not only to the product concerned or the production destined to exports.
- (261) Following the final disclosure, the GOA and CARBIO claimed that the Commission failed to provide sufficient reasons supporting the conclusion that the average import prices reflected prevailing market conditions, besides referring to the absence of distortions and pointing out (i) that import prices were in line with world prices; and (ii) that they represented a significant volume of the sampled exporting producers' purchases. CARBIO alleged that this reasoning was contradictory with the Commission's finding in recital (190) that domestically produced soybeans have fully satisfied domestic demand for an input for domestic biodiesel production and that imported soybeans were not used for the production of biodiesel.
- (262) To the contrary of what was claimed, the Commission explained in recitals (254) why the import price of soybeans actually paid by the sampled exporting producers reflected the prevailing market conditions. Moreover, the fact that import prices were in line with world prices – contrary to Argentinian domestic prices – and that imports represented a significant share of the sampled exporting producers' purchases are key elements in establishing that a benchmark reflects prevailing market conditions. The fact that imported soybeans were not used to produce biodiesel does not dispel this conclusion because imported soybeans were crushed in the same crushing facilities as domestically produced soybeans that were used for the production of biodiesel were crushed. Thus, in addition to the findings of the Commission recalled by CARBIO, the Commission in recital (258) considered also the fact that imported soybeans were delivered at the ports in proximity of the plants used for crushing both domestic and imported soybean for production of biodiesel. Therefore, this claim was rejected.

⁽¹⁰³⁾ See in that respect the Appellate Body findings in *WT/DS436/AB/R United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India*, 8 December 2014, paras 4.292-4.322.

- (263) Moreover, CARBIO claimed that the average import prices of soybeans did not constitute an appropriate benchmark because they did not reflect the market conditions in Argentina. In particular, imported soybeans were imported under the Temporary Import Regime and were not used to produce biodiesel, and were delivered under CIF terms, whereas domestic purchase of soybeans did not incur international delivery charges.
- (264) The Commission noted that it already described in recital (262) why it considered that the imported soybeans reflected the prevailing market conditions in Argentina. In addition, the Commission considered the CIF import price adequate, as this reflected the price at the crushing plant, located at the port, where also domestically produced soybeans to produce biodiesel were crushed. In addition, as recalled in recital (254), the CIF import prices were on the same price level as the world market price. Finally, CARBIO did not add further arguments as to why the import price would not be an appropriate benchmark. Therefore, this claim was rejected.
- (265) Following the final disclosure, CARBIO also claimed that, in the calculation of the benefit, the Commission considered only the difference between the price paid for domestic soybeans with the benchmark when the former was lower than the latter. However, when the price paid for domestic soybeans was higher than the benchmark, the Commission discarded the difference, while the amount exceeding the benchmark should have deducted from the total amount in of the benefit.
- (266) The Commission noted that the approach taken in calculating the benefit for the provision of soybeans for less than adequate remuneration was warranted. Indeed, the Panel in *US – Anti-Dumping and Countervailing Duties (China)* found that ‘not “offsetting” positive benefit amounts with “negative” benefit amounts’ was consistent with the SCM Agreement ⁽¹⁰⁴⁾. Moreover, in any case, the Commission considered that the claim was ineffective because, even if the Commission were to apply the methodology proposed by CARBIO, the continuation of the subsidisation would still be found based on the resulting subsidy margin. Therefore, this claim was rejected.

3.3.1.6. Specificity

- (267) The GOA's set of measures were directed to benefit certain industries, including the domestic biodiesel industry. Indeed, even though the distortions on soybeans also benefit downstream products other than biodiesel, the benefit is available only to certain industries in Argentina, namely those in the soybean value chain. Furthermore, the specific focus of the GOA on the biodiesel industry within the soybean value chain is shown by the link between soybeans and biodiesel in the relevant legislation indicated in recitals (117) to (122). Moreover, even if the GOA's support granted to biodiesel through several measures is also granted to other biofuels, those measures are limited to a group of enterprises or industries. They are, therefore, specific under Article 4(2)(a) of the basic Regulation.

3.3.1.7. Conclusion

- (268) The Commission found that through a set of measures, amounting to the provision of soybeans for less than adequate remuneration and-or income or price support, the GOA provided support to the biodiesel industry. The GOA conferred a benefit to the recipients which is specific, thus amounting to a countervailable subsidy.

⁽¹⁰⁴⁾ Panel Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R, adopted 25 March 2011, as modified by Appellate Body Report WT/DS379/AB/R, DSR 2011:VI, p. 3143, para. 11.68.

3.3.1.8. Calculation of the subsidy amount

(269) The subsidy rate established with regard to this set of measures during the investigation period for the sampled exporting producers amounts to:

Company	Subsidy rate
LDC Argentina	5,12 %
Renova Group	8,30 %

3.3.2. Provincial tax exemptions provided by the province of Santa Fe

(270) The applicant alleged that producers of biodiesel in the province of Santa Fe continued to benefit from a government revenue foregone in the form of various tax exemptions granted for 15 years, as found by the Commission in the original investigation ⁽¹⁰⁵⁾.

3.3.2.1. Financial contribution

(271) The investigation revealed that indeed one of the legal bases identified in the original investigation, Santa Fe Provincial Law 12692 ⁽¹⁰⁶⁾, continued to be applicable and that the only amendment to it was made by Santa Fe Provincial Law 12956 ⁽¹⁰⁷⁾, which identified the taxes potentially subject to the exemption: gross income tax, stamp duty, real estate tax, service remuneration charges and single vehicle duty ⁽¹⁰⁸⁾. It is further implemented by Regulatory Decree 158/07 ⁽¹⁰⁹⁾ together with its annex, and Resolution 121/21 ⁽¹¹⁰⁾, which includes the template for the request.

(272) Santa Fe Provincial Law 12692 is entitled 'provincial adhesion' to Law 26.093, regulating the previous biodiesel domestic mandate. Despite the latter being replaced by the 2021 Biofuels Law no further amendment was made to Santa Fe Provincial Law 12692.

(273) As found in the original investigation provincial law 12.692 provides for tax exemptions (as well as reductions or deferrals) for companies in the province involved in the research, development, generation, production and use of products related to renewable energy, notably the production of biodiesel. Biofuels are mentioned under Article 3(c), 4, 5(d), and 10 of Santa Fe Provincial Law 12692 and biodiesel production specifically is mentioned at Article 10 of Santa Fe Provincial Law 12692.

(274) The current investigation also revealed that, while the tax exemptions may be granted for a maximum period of 15 years, they are subject to annual renewals. Renewals are not granted automatically, but upon showing that the beneficiary continued the subsidised activity and fulfilled at least 80 % of the production and number of employees committed when the tax exemption had been initially requested. The annual renewal depended also on the fiscal space available to the provincial government of Santa Fe based on the annual Budget Law ⁽¹¹¹⁾.

⁽¹⁰⁵⁾ Commission Implementing Regulation (EU) 2019/244, recs. (296)-(297).

⁽¹⁰⁶⁾ Ley 12692, *Adhesión provincial a la Ley Nacional n° 26093*.

⁽¹⁰⁷⁾ Ley 12956, *Modificatoria de la Ley 12692 sobre adhesión provincial a la Ley Nacional n° 26093 de Energías Renovables*.

⁽¹⁰⁸⁾ Article 1, Santa Fe Provincial Law 12956.

⁽¹⁰⁹⁾ Decreto 158/07, *Provincia de Santa Fe. Régimen promocional provincial. Energías renovables no convencionales. Impuestos sobre los ingresos brutos y de sellos. Exenciones, reducciones y diferimientos. Ley 12.692. Su reglamentación. Con las modificaciones de los Dtos. 2.644/12 (B.O.: 1/10/12 – Sta. Fe) y 2.949/14 (B.O.: 23/9/14 – Sta. Fe)*.

⁽¹¹⁰⁾ Ministerio de Ambiente y Cambio Climático de la provincia de Santa Fe - Resolución 121/21.

⁽¹¹¹⁾ Article 3, Regulatory Decree 158/07.

- (275) The investigation revealed that no annual renewals under Santa Fe Provincial Law 12692 were granted since 2020. Indeed, the investigation found that certain companies in the Renova Group were producing biodiesel in Santa Fe, later exported by Viterra and Molinos Agro, and benefitted from this exemption in the past, i.e. before the review investigation period. These companies were still authorised to receive the stamp duty and real estate tax exemption during the review investigation period (i.e. their exemption was still within the 15-year period granted), they stopped receiving annual renewals of the exemptions before the review investigation period. The sampled exporting producers of biodiesel (LDC Argentina, Molinos Agro and Viterra Argentina) were not eligible for the tax exemptions because they did not own directly the production facilities in Santa Fe or because the beneficiaries of the tax exemptions had to be exclusively authorized for the promoted activity, in this case the production of biodiesel, whereas the sampled exporting producers were active in a variety of productions and activities beyond the production of biodiesel ⁽¹¹²⁾.
- (276) Therefore, despite one of its biodiesel producers still being authorised to receive the stamp duty and real estate tax exemption during the review investigation period, the Renova Group did not benefit from the tax exemptions under Santa Fe Provincial Law 12692 during the review investigation period.
- (277) The investigation revealed that tax exemptions had been granted based on Santa Fe Provincial Law 8478 ⁽¹¹³⁾.
- (278) Santa Fe Provincial Law 8478, dating back to 1979, together with Provincial Decree 3856/1979 and Provincial Decree 1361/2022 ⁽¹¹⁴⁾, established a system of promotion of industrial development of the province, including the granting of tax exemptions, reductions or deferrals, for a maximum duration of up to 10 years ⁽¹¹⁵⁾. A system of annual renewal similar to that of Santa Fe Provincial Law 12692 applied.
- (279) Industries concerned by this scheme included all those companies involved in an industrial activity entailing ‘physical, chemical or physicochemical transformation in form or essence, of raw materials or materials into new products, through an induced process, by means of the application of uniform production techniques, the use of machinery or equipment and the repetition of unitary operations or processes, carried out in fixed installations.’ ⁽¹¹⁶⁾. This description encompasses the production of biodiesel.
- (280) Therefore, the relationship between the tax exemption system under Santa Fe Provincial Law 12692 and the tax exemption system under Santa Fe Provincial Law 8478 is a special scheme versus a general scheme. Indeed, the regulatory framework for the tax exemption system under Santa Fe Provincial Law 12692 provides that ‘For cases not provided for in these regulations, the provisions contemplated in the “Industrial Promotion Regime – Law 8,478”, complementary and regulatory norms will be applied subsidiarily’ ⁽¹¹⁷⁾. Therefore, while Santa Fe Provincial Law 12692 applied only to companies related to renewable energy, notably the production of biodiesel, Santa Fe Provincial Law 8478 applied to wider number of industries.
- (281) Still, producers of biodiesel in the province of Santa Fe qualified under both laws. In particular, in the case of Santa Fe Provincial Law 8478, the Renova Group benefitted from the tax exemptions, since there is no limitation on the number of business activities in which the beneficiary can be involved.
- (282) This is shown by the fact that a Renova Group’s producer of biodiesel, later exported by Molinos Agro and Viterra Argentina, benefitted from a stamp duty and real estate tax exemption under Santa Fe Provincial Law 8478 before the review investigation period. Moreover, this is also shown by the fact that a sampled exporting producer in the Renova Group was newly granted a new exemption from gross income tax, real estate tax and single vehicle duty shortly after the review investigation period.

⁽¹¹²⁾ Article 5(b), Santa Fe Provincial Law 12692.

⁽¹¹³⁾ Ley 8478, *Promoción industrial*.

⁽¹¹⁴⁾ Decreto 1361.

⁽¹¹⁵⁾ Articles 1 and 4(a).

⁽¹¹⁶⁾ Article 4, Provincial Decree 3856/1979.

⁽¹¹⁷⁾ Article 5, Provincial Decree 158/07.

(283) Finally, no evidence was found of Article 127 Santa Fe turnover tax exemption for export sales and of Article 183.29 Santa Fe Stamp Tax Exemption. With specific regard to the first one, CARBIO and the sampled exporting producers explained that the export turnover does not constitute relevant turnover subject to the provincial gross income taxes, as provided by Article 179(c) of the Santa Fe Fiscal Code ⁽¹¹⁸⁾.

(284) Following final disclosure, the GOA claimed unspecified errors and partial interpretation in relation to this program. However, since this claim was unsubstantiated, the Commission rejected it.

3.3.2.2. Benefit

(285) Under Santa Fe Provincial Law 12692, despite one group of sampled exporting producers being authorised to receive the stamp duty and real estate tax exemption, during the review investigation period no taxes were exempted due to the lack of annual renewal. Therefore, it was not possible to calculate any benefit.

(286) Under Santa Fe Provincial Law 8478, no taxes were exempted as exemptions to one group of sampled exporting producers either expired before the start of the review investigation period or were granted after.

3.3.2.3. Specificity

(287) The tax exemptions under Santa Fe Provincial Law 12692 is *de jure* specific as it applied only to the industries related to renewable energy, notably the production of biodiesel. Moreover, the scheme is also regionally specific insofar benefits only those of the industries mentioned which established activities or invested in the province of Santa Fe.

(288) The tax exemptions under Santa Fe Provincial Law 8478 is *de jure* specific as it applied only to the industries described in Article 4 of Provincial Decree 3856/1979, a description which encompasses the production of biodiesel. Moreover, the scheme is also regionally specific insofar benefits only those of the industries mentioned which established activities or invested in the province of Santa Fe.

3.3.2.4. Calculation of the subsidy amount

(289) Since no benefit was received during the review investigation period, it was not possible to calculate any subsidy amount.

3.4. Schemes originally investigated for which no benefit was found

(290) The applicant requested the Commission to re-investigate certain programmes the Commission had found not to have been provided to Argentinian sampled exporting producers in the original investigation.

3.4.1. Provision of loans and export financing on preferential terms and preferential lending

(291) The applicant claimed in the original investigation that the BNA – effectively managed by the GOA on a day-to-day basis through its authority to appoint all members of the board – provided export financing and preferential loans specifically benefiting the biodiesel industry of Argentina. To receive a credit under this programme, the receiver had to demonstrate that the financing was applied to the various stages of the production and commercialisation process for the export of the good.

⁽¹¹⁸⁾ Ley 3456, Código Fiscal de la Provincia de Santa Fe.

3.4.1.1. Findings of the investigation

(292) No evidence was found of any loans or export credits by the BNA to the sampled exporting producers during the review investigation period.

3.4.1.2. Conclusion

(293) The Commission concluded that no preferential lending was provided to the sampled exporting producers during the review investigation period.

3.4.2. *Government revenue forgone or not collected under the 2006 Biofuels Law*

(294) The applicant alleged that Articles 13(d) and 15.1 of the 2006 Biofuels Law promoted the development of biofuels and provided various means to help develop and support the domestic biodiesel industry, therefore the subsidy is specific. Various fiscal subsidies were authorised, including the accelerated depreciation for capital goods. To receive this benefit a company must be incorporated in Argentina and operate exclusively for the development of the biofuels. Accelerated depreciation allows the biodiesel producers to reduce their tax liability by reducing their taxable income. The reduction of taxes qualifies as a financial contribution by the Government, as it is the revenue forgone. Also, Article 15 of the 2006 Biofuels Law provides biodiesel producers the possibility to reduce the tax base on which the minimum presumed income tax is calculated. To be eligible the company should be located in Argentina and operate exclusively for the development of biofuels, the recipient should be a biofuel producer.

3.4.2.1. Findings of the investigation

(295) The investigation found that none of the sampled exporting producers benefitted from the promotional benefits set out in Articles 13(d) and 15 of the 2006 Biofuels Law during the review investigation period.

3.4.2.2. Conclusion

(296) This measure was not used during the review investigation period by the sampled exporting producers and thus the Commission concluded it could not calculate a benefit for it. The Commission also noted that the provisions of the 2006 Biofuels Law became void as a consequence of the entry into force of the 2021 Biofuels Law ⁽¹¹⁹⁾, so it remained unclear whether Articles 13(d) and 15.1 of the 2006 Biofuels Law were still in force and whether granted any benefit during the review investigation period.

3.4.3. *Provincial tax exemptions provided by the province of Cordoba*

(297) The applicant alleged that the province of Cordoba established various tax benefits in the Cordoba Provincial Law 9397 ⁽¹²⁰⁾, constituting the 'provincial adhesion' to the 2006 Biofuels Law. Development and sustainable use of biofuels were legally exempt for a 15-year term from the payment of taxes on gross income, production industrialisation and storage, seals of acts, contracts and operations carried out regarding biofuels. Only incorporated companies that produce, process and/or store biofuels were eligible. Biofuel projects also could benefit from loan support from the Official Bank at a subsidized rate and cut downs in the consumption of energy.

3.4.3.1. Findings of the investigation

(298) The original investigation found that the tax exemptions were available to biofuel producers located in the province of Cordoba ⁽¹²¹⁾. The current investigation confirmed this finding. However, none of the sampled exporting producers in the current investigation produced biodiesel in the province of Cordoba.

⁽¹¹⁹⁾ Article 21, 2021 Biofuels Law.

⁽¹²⁰⁾ Ley 9397 Adhesion de la provincial a la nacional no 26.093, y declaracion de interes public de la promocion de la produccion, procesamiento y uso sustentable de biocombustibles.

⁽¹²¹⁾ Commission Implementing Regulation (EU) 2019/244, rec. (280).

3.4.3.2. Conclusion

(299) Therefore, the sampled exporting producers did not benefit from this tax exemption and thus the Commission concluded it could not calculate a benefit for it. Yet, the Commission concluded that the subsidy continued being in place.

3.4.4. *Provincial tax exemptions provided by the province of Buenos Aires*

(300) The applicant alleged that the province of Buenos Aires established the Provincial Law 13719 to exempt the payment of taxes on gross income and real estate for 15 years, the conditions being that the project should be intended for export purposes and that the plant should be located in the Buenos Aires province, as well as that beneficiaries had to be qualified and registered within the framework of the 2006 Biofuels Law.

3.4.4.1. Findings of the investigation

(301) The original investigation found that the tax exemptions were available to biofuel producers located in the province of Buenos Aires ⁽¹²²⁾. The current investigation confirmed this finding. However, none of the sampled exporting producers in the current investigation produced biodiesel in the province of Buenos Aires.

3.4.4.2. Conclusion

(302) Therefore, the sampled exporting producers did not benefit from this tax exemption and thus the Commission concluded it could not calculate a benefit for it. Yet, the Commission concluded that the subsidy continued being in place.

3.4.5. *Province of Santiago del Estero System of Promotion and Industrial Development (PSPID) – Provincial Law 6750*

(303) The applicant alleged that a provincial system was implemented in 2005 in the province of Santiago del Estero for industrial promotion and development to foster new industries within the province and to expand existing ones, pursuant to Santiago del Estero Provincial Law 6750 ⁽¹²³⁾. The following eight benefits were available: (1) refund of up to thirty per cent of the investment made, not to exceed five years; (2) refund of up to fifty per cent or tax credit for the purposes of the payment of future taxes for investments in roads, electricity networks ... executed by the companies associated with the projects; (3) exemption of provincial taxes, current or to be generated, on a full or gradual basis; (4) facilities for the purchase, a location or commodatum agreement with a purchase option within the period of five years and leasing personal property and real estate of the provincial State; (5) provision of administrative, technological, and financial assistance, and technical advisory services by State Organisations; (6) support and state participation in the management of exemptions and tax and tariff reductions, promotions or protection measures and other tax exemptions (zero duties) in the national or municipal order; (7) subsidies of up to fifty per cent of interest rate of the credit line for promoted companies in accordance to the terms set forth; and (8) the award of investment promotion loans.

3.4.5.1. Findings of the investigation

(304) The investigation found that none of the sampled exporting producers in the current investigation were located in the province of Santiago del Estero.

3.4.5.2. Conclusion

(305) Therefore, the sampled exporting producers did not benefit from this tax exemption and thus the Commission concluded it could not calculate a benefit for it. Yet, the Commission concluded that the subsidy continued being in place.

⁽¹²²⁾ Commission Implementing Regulation (EU) 2019/244, rec. (283).

⁽¹²³⁾ *Provincia de Santiago del Estero, Ley 6.750, Sistema Provincial de Promoción y Desarrollo Industrial.*

3.5. New schemes

(306) The applicant in the request identified new alleged subsidies which had not been investigated in the original investigation.

3.5.1. *Direct transfer of funds: Financing programme for working capital in the biodiesel industry*

(307) Resolution 947/2023 ⁽¹²⁴⁾ created a financing program for the biofuels sector in Argentina, valid until 31 December 2023. The main objective of the Resolution was to promote the development of the biofuels industry in Argentina. According to this program, ARS 988 000 000 from the National Treasury were invested in the National Fund for Productive Development ('FONDEP').

(308) According to the applicant, the FONDEP offered favourable financing conditions to small and medium-sized enterprises for the acquisition of inputs necessary to produce biodiesel. As recalled in recital (225), the president of the BNA explicitly stated that the aim of the credit was 'to create more jobs and to be able to continue exporting, as well as saving foreign exchange' ⁽¹²⁵⁾.

3.5.1.1. Findings of the investigation

(309) The investigation found that, being intended for small- and medium-size enterprises, this program was meant to support the biodiesel producers involved in the domestic mandate, which are different from the biodiesel exporters. While some biodiesel producers in the Renova Group were involved in the domestic mandate, these did not resort to funding from FONDEP during the review investigation period. Thus, the investigation found that none of the sampled exporting producers benefitted from funding from the FONDEP during the review investigation period.

(310) Following final disclosure, the GOA claimed unspecified errors and partial interpretation in relation to this program. However, since this claim was unsubstantiated, the Commission rejected it.

3.5.1.2. Conclusion

(311) This measure was not used during the review investigation period by the sampled exporting producers and thus the Commission concluded it could not calculate a benefit for it. However, during the review investigation period the scheme remained available for eligible biodiesel producers.

3.5.2. *Revenue foregone through the new Biofuels Law 27640 of 2021*

(312) The applicant alleged that new 2021 Biofuels Law stated that biofuels were exempted from the tax on liquid fuels and from the tax on carbon dioxide. Moreover, the 2021 Biofuels Law set tax breaks for biofuels in the form of lower value added tax, for income taxes, for diesel import tax, for hydric infrastructure tax.

3.5.2.1. Findings of the investigation

(313) The investigation revealed that Article 22 of the 2021 Biofuels Law established that 'Biodiesel and bioethanol will not be taxed by the Liquid Fuel Tax (ICL) and the Carbon Dioxide Tax (ICO2), established in Title III, Chapters I and II, respectively, of Law 23,966, with the aforementioned treatment extending to all stages of production, distribution and marketing. In the case of the mixture of said biofuels with fossil fuels, the tax will be levied only on the fossil fuel component that makes up the mixture. The tax treatment provided for in this article will apply until the date of termination of the regime and will apply as long as the main raw materials used in the respective production processes are of national origin'.

⁽¹²⁴⁾ Ministerio de Economía, Resolución 947/2023, Programa de Financiamiento para Capital de Trabajo en la Industria del Biodiesel – Crease.

⁽¹²⁵⁾ <https://biodiesel.com.ar/16276/biocombustibles-la-secretaria-de-energia-de-argentina-lanza-credito-a-tasa-preferencial-para-la-industria-del-biodiesel>.

- (314) However, Article 4 of Title III of Law 23966 established that 'In the case of biodiesel and bioethanol fuel, the tax will be fully satisfied with the payment of the tax on the naphtha, gas oil and diesel oil component or other taxed component. Biofuels in their pure state are not affected'. No rate was provided for biodiesel in Article 4, in contrast with other fuels.
- (315) It remained, thus, unclear whether there was a discrimination in the tax levy based on the origin of the biodiesel. However, it was apparent that pure biodiesel, as the product concerned is, was not subject to the tax. Moreover, in contrast to the allegation in the request, it was apparent that the tax was levied on the blended fuels based on biodiesel, which is produced by the blenders further down the value chain. While these findings may be relevant for the income or price support analysis, as indicated in recitals (225) and (227), since the current investigation concerns biodiesel and its exporting producers – and not blended fuels deriving from biodiesel – the Commission found that the sampled exporting producers did not benefit directly from this tax exemption.
- (316) Following final disclosure, the GOA claimed unspecified errors and partial interpretation in relation to this program. However, since this claim was unsubstantiated, the Commission rejected it.

3.5.2.2. Conclusion

- (317) This measure was not used during the review investigation period by the sampled exporting producers and thus the Commission concluded it could not calculate a benefit for it.

3.6. Conclusion on subsidisation

- (318) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic Regulation for the sampled companies by examining the only subsidy programme which they were found benefitting from during the review investigation period, which is the GOA support to the biodiesel industry, including through the provision of soybeans for less than adequate remuneration. To calculate the subsidisation due to this scheme, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's turnover generated from soybean-based products. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the review investigation period. The subsidy amount per tonne of product concerned exported to the Union during the review investigation period was then calculated, and the margins calculated as a percentage of the Costs, Insurance and Freight (CIF) value of the same exports per tonne.
- (319) The total amount of subsidisation exceeds the *de minimis* threshold mentioned in Article 14(5) of the basic Regulation.
- (320) Moreover, the Commission found that, even if not used by the sampled exporting producers, other subsidies originally examined remained in place together with other new subsidies. It was therefore concluded that the subsidy schemes investigated were in force during the review investigation period.

3.7. Likelihood of continuation of subsidisation

- (321) Further to the finding of the existence of subsidisation during the review investigation period, the Commission investigated, in accordance with Article 18(2) of the basic Regulation, the likelihood of continuation of subsidisation, should the measures be repealed.

(322) In this context, the Commission investigated the following elements: the foreseeable future developments of the GOA's policy, the production capacity and spare capacity in Argentina, the attractiveness of the Union market, including the relation between export prices to third countries and the price level in the Union, and the possible absorption capacity by third countries.

3.7.1. Future developments of the GOA's policy

(323) It was established that the sampled exporting producers continued to benefit from countervailable subsidisation by the Argentinian authorities during the RIP. It was established that subsidisation continued at country-level as well, since most schemes were available nation-wide to exporters of biodiesel.

(324) As concerns the export tax on soybeans and soybean oils, during the on-spot verification, the GOA confirmed that the rates of 31 % for soybean oil and 33 % for soybeans were still applicable after the review investigation period. Public information confirmed that this was the case at least until July 2024 ⁽¹²⁶⁾. Moreover, during the on-spot verification, the GOA also confirmed that the 29 % export tax rate for biodiesel was also still applicable after the review investigation period. Likewise, public information confirmed that this was the case at least until July 2024 ⁽¹²⁷⁾. During the on-spot verification, the GOA also added that export taxes continued to be key revenues for the federal budget of Argentina.

(325) Regarding the export balancing volumes, while they continued to be implemented after the review investigation period, as shown in recital (132), the GOA reported that on 20 December 2023, after the review investigation period, the newly formed administration of the GOA adopted Decree 70/2023 ⁽¹²⁸⁾, whose Article 142 established the principle whereby *'The National Executive Power may not establish prohibitions or restrictions on exports or imports for economic reasons. They may only be carried out by law'*. Restrictions were considered for economic reasons when directed to a series of objectives, including *'to stabilize internal prices at convenient levels or to maintain a volume of supply adequate to the supply needs of the internal market'* and *'to meet the needs of public finances'*. Furthermore, Article 144 stated that *'The National Executive Power shall not establish export or import bans or quotas for economic reasons or grounds'*. Such principle was put into practice with Resolution 302/2024 ⁽¹²⁹⁾, adopted on 8 May 2024, which repealed Resolution 276/2021 and the export balancing volumes.

(326) The principle enshrined in Decree 70/2023 was carried on by the draft Omnibus Law ⁽¹³⁰⁾, which included a section introducing a new regulatory framework for biodiesel. However, this section did not pass the parliamentary scrutiny and the Omnibus Law was eventually published without it. Therefore, the local content requirement and the framework for the biodiesel domestic mandate, including the setting of the domestic price of biodiesel, were not modified after the review investigation period. The GOA clarified that all those sections of the Omnibus Law that were not passed by the Congress, like the section dealing with the new framework for biofuels, were likely to be re-submitted to the Congress in the form and time to be determined by the GOA in the future, though no concrete step was made in this direction.

(327) During the on-spot verification, the GOA further explained that there was a draft bill to amend the 2021 Biofuels Law, pending in one of the parliamentary Committee of the Lower House. The project was proposed by the *Liga Bioenergética* a group of six Argentinian provinces where farmers and producers of biodiesel are located. It was reported also in public information ⁽¹³¹⁾. However, its parliamentary journey was still pending.

(328) Concerning the compensation program for small and medium-sized soybean and corn producers, as reported in recital (148), its implementation stopped in December 2022, during the review investigation period.

⁽¹²⁶⁾ 'Argentina: Biofuels Annual', United States Department of Agriculture (USDA) – Global Agriculture Information Network (GAIN) report No AR2024-0011, 5 August 2024 ('2024 GAIN Report'), pp. 10-11, available at: <https://www.fas.usda.gov/data/argentina-biofuels-annual-9>.

⁽¹²⁷⁾ *Ibid.*

⁽¹²⁸⁾ Decreto 70/2023, DNU-2023-70-APN-PTE – Disposiciones.

⁽¹²⁹⁾ Ministerio de Economía, Resolución 302/2024, RESOL-2024-302-APN-MEC.

⁽¹³⁰⁾ Eventually published as Ley 27742, Ley de Bases y Puntos de Partida para la Libertad de los Argentinos.

⁽¹³¹⁾ 2024 GAIN Report, pp. 2 and 6.

- (329) Regarding instead the tax exemptions in the province of Santa Fe, despite the fact that no benefit could be calculated for the review investigation period, the investigation found that not only the tax exemptions under Santa Fe Provincial Law 12692 were still in force (and a Renova Group's producer of biodiesel, later exported by Molinos Agro and Viterra Argentina, was still authorised to receive the stamp duty and real estate tax exemption, despite the absence of the annual renewal of the benefit), but also that tax exemptions under Santa Fe Provincial Law 8478 were still in force (and a sampled exporting producers in the Renova Group was granted a new exemption shortly after the review investigation period).
- (330) In conclusion, the countervailable subsidy schemes found in the current investigation give recurring benefits and, there is no indication that any changes to the schemes in the future – which at this stage remain only potential – are susceptible to stop the benefits recurring from them. Likewise, there are no indications that the schemes will be completely phased out in the foreseeable future, or that the sampled exporting producers would stop obtaining benefits under these schemes.
- (331) Following final disclosure, CARBIO claimed that only one of the countervailable subsidy schemes found in the current investigation gave recurring benefits, i.e. the provision of soybeans for less than adequate remuneration.
- (332) The Commission disagreed. As clarified in recital (329), while the Commission could not calculate a benefit for the review investigation period in relation to the tax exemptions in the province of Santa Fe, it is uncontested that a benefit was received after the review investigation period. In any case, as indicated in recital (329), there are no indications that the tax exemptions in the province of Santa Fe, will be phased out in the foreseeable future. Therefore, for the purposes of the likelihood of continuation of subsidisation, this scheme can be also considered as giving recurring benefits. Thus, this claim was rejected.
- (333) CARBIO also reported that, after the review investigation period, in January 2025, Decree 38/2025 lowered the export tax rate on soybeans from 33 % to 26 %⁽¹³²⁾. Any impact on the soybean producers would have therefore decreased. Moreover, according to CARBIO, since January 2025 the export tax on soybeans would thus be higher than the export tax on biodiesel (29 %) and the Commission should revisit the quotation in recital (115) whereby higher rates are imposed on raw materials and lower rates on finished products, thereby providing a price advantage to domestic downstream industries.
- (334) The Commission noted that this further adjustment of the export tax on soybeans confirmed that the GOA is entitled to adjust the export tax system regularly. The Commission therefore concluded that this adjustment did not withdraw the subsidy measures at stake and that a benefit will continue to be conferred after the review investigation period. In addition, the Commission noted that Decree 38/2025 modified also the export tax rate on biodiesel from 29 % to 23 %⁽¹³³⁾, thereby keeping the quotation in recital (115) above. Thus, this claim was rejected.
- (335) CARBIO added that the reduction of the export tax rate on soybeans, taken together with the facts that the subsidy margin showed a reduction in subsidisation compared to the original investigation, and that the Commission found in recital (328) that compensation program for small and medium-sized soybean and corn producers were terminated, should lead to the conclusion that there is no likelihood of continuation of subsidisation.
- (336) The Commission concluded that there is continuation of subsidisation, and the factors mentioned by CARBIO did not devalue this conclusion, since the other measures mentioned in recitals (101) to (150) above together amounting to the provision of soybeans for less than adequate remuneration were not terminated. Therefore, a benefit will continue to be conferred after the review investigation period. On this basis, this claim was rejected.

⁽¹³²⁾ Decreto 38/2025, DECTO-2025-38-APN-PTE – *Derecho de Exportación*.

⁽¹³³⁾ Under customs code 3826 00 00.

3.7.2. Production capacity and spare capacity in Argentina

- (337) The Commission examined whether the subsidised imports from Argentina to the Union would be made in significant volumes should the measures be allowed to lapse and, with them, also the undertaking in force where the exporting producers committed to export at a minimum import price into the Union.
- (338) Based on publicly available information reported by the GOA, production capacity in Argentina remained stable since 2020 at 3 920 550 tonnes ⁽¹³⁴⁾. As already indicated in recital (47), capacity remained stable also in the face of the drought suffered by Argentina between 2022 and 2023, which confirms the temporary nature of this phenomenon.
- (339) Compared with actual production, this resulted in a spare capacity of over 2 million tonnes in the review investigation period and throughout the period considered.

Table 3

Argentinian spare capacity (MT)

Year	Production capacity	Production	Spare capacity
2020	3 920 550	1 157 364	2 763 186
2021	3 920 550	1 723 665	2 196 885
2022	3 920 550	1 909 618	2 010 932
RIP	3 920 550	1 184 444	2 736 106

Source: GOA's questionnaire reply, coming from the 2023 GAIN Report for production capacity and from a publicly available Argentinian database for production.

- (340) It follows from the above that during the review investigation period Argentina had a utilisation rate of only 30 % and retained significant spare capacities, amounting to 15 % of Union consumption during the review investigation period as set out in Table 4. As the export data in Table 2 showed, the substantial spare capacity cannot be absorbed by the domestic market and is therefore largely available for exports. It follows that, should the measures be allowed to lapse and, with them, the undertaking in force, significant volumes of imports to the Union may resume, in particular taking into consideration the attractiveness of the Union market as lined out in the following recitals.

3.7.3. Attractiveness of the Union market

- (341) The Commission examined whether it was likely that Argentinian exporting producers would increase their export sales at subsidised prices on the Union market should measures be allowed to lapse. The Commission first analysed the average price level of Argentinian exports to third country markets and compared them to the average price level of Argentinian exports to the Union market, to determine the potential export price of biodiesel absent the countervailing measures.
- (342) In order to compare the prices of exports to the Union with prices of exports to third countries at the same level, the Commission examined the level of prices to the Union and the level of prices to third countries publicly available in Argentinian export statistics ⁽¹³⁵⁾, both at FOB level.

⁽¹³⁴⁾ 2023 GAIN Report, p. 16. Data in million litres was converted to tonnes with the following equivalence: 1 000 l = 1 m³ = 0,885 t.

⁽¹³⁵⁾ <http://datos.energia.gob.ar/dataset/estadisticas-de-biodiesel-y-bioetanol/archivo/4e04bc74-8625-412c-acc2-48412f2509b4>.

(343) On this basis, the Commission found that during the review investigation period the unit export price of biodiesel to the Union was 25 % higher than the unit export price to third countries (Canada and China), which make the Union market more lucrative (and therefore more attractive) for Argentinean exporting producers. Prospectively, taking into account that the export price to the Union analysed is influenced by the minimum import price under the undertaking, the level of prices to third countries shows the potential level of subsidised prices to the Union, absent the measures and the undertaking.

(344) Indeed, the verification of the sampled exporting producers allowed the Commission to understand the effects of the minimum import price established pursuant to the undertaking. The verification showed that, if prices in the Union are lower than the minimum import price, or if they do not allow for sufficient profits on top of the minimum import price, Argentinean exporting producers prefer to export soybean oil or other intermediate products as neutralized oil (produced on the same production line as biodiesel, but one step ahead in the production chain), which are not subject to countervailing duties from the Union and have a lower production cost compared to biodiesel. Such business decision does not require long adjustment timeframes as switching on and off the biodiesel plants is extremely easy. Therefore, the minimum import price under the undertaking prevents exports below the minimum import price, which would be likely to happen, absent the measures and the undertaking.

(345) The Commission analysed whether the Union constituted an attractive market for Argentinean biodiesel exporters.

(346) During the review investigation period, the sampled exporting producers exported biodiesel only to the Union. Furthermore, based on publicly available information reported by the GOA, during the review investigation period the Union was the top export destination for Argentinean biodiesel and this was the situation at least since 2020 ⁽¹³⁶⁾. Publicly available information confirmed that 'The European Union continues to be the main and practically exclusive market for Argentine biodiesel' ⁽¹³⁷⁾.

(347) Moreover, as recalled in recital (243), the biodiesel domestic mandate of 7,5 %, effective for most of the review investigation period and remained unchanged also after this period, reduced the quantity of biodiesel consumed within Argentina's domestic market compared to the previous 10 % mandate under the 2006 Biofuels Law and to the temporary 12,5 % mandate. As a consequence, a low biodiesel domestic mandate pushes more production towards export, notably towards the Union.

(348) More generally, the biodiesel industry in Argentina is largely export-oriented, with only smaller companies devoted to the supply of the domestic market. On the contrary, larger exporting companies are located along the course of the Paraná river, in a strategic location for exports which allows for the direct shipment to the Union and other export destinations.

3.7.4. *Possible absorption capacity by third country markets*

(349) Finally, the Commission analysed whether third country markets have the capacity to absorb part of Argentina's production of biodiesel.

(350) In 2016, Peru and, in 2017, the US, both of which used to be traditional export destinations for Argentinean biodiesel, imposed anti-dumping and countervailing duties on Argentinean biodiesel, at a prohibitive level ⁽¹³⁸⁾.

⁽¹³⁶⁾ <http://datos.energia.gob.ar/dataset/estadisticas-de-biodiesel-y-bioetanol/archivo/4e04bc74-8625-412c-acc2-48412f2509b4>.

⁽¹³⁷⁾ 2024 GAIN Report, p. 19.

⁽¹³⁸⁾ 2024 GAIN Report, p. 17.

(351) As it can be seen in Table 2, exports from Argentina to third countries increased in the review investigation period. Based on Argentinian publicly available statistics ⁽¹³⁹⁾, this increase was due mainly to higher export volumes to Canada. Overall, however, these exports to third countries constituted only a fraction of the total export volume during the review investigation period, i.e. only 3,6 %, with the remaining share being entirely directed to the Union. During the review investigation period, the only other export destination was China, with an immaterial quantity of 21 tonnes imported from Argentina. However, China has its own production of biodiesel and will not be able to absorb increased export volumes. Therefore, the Commission concluded that third countries are not likely to have the capacity to absorb Argentina's exports of biodiesel.

3.7.5. *Conclusion on the likelihood of continuation of subsidisation*

(352) In view of the above, in accordance with Article 18(3) of the basic Regulation, the Commission concluded that there was a likelihood of continuation of subsidisation should the measures in force be allowed to lapse.

(353) The investigation showed that the imports from Argentina continued to enter the Union market at subsidised prices during the review investigation period.

(354) In addition, during the review investigation period, the Commission found that the excess spare capacity in Argentina was significant. The attractiveness of the Union market in terms of size and sales prices also indicated that Argentine exports would likely be directed towards the Union market, should the countervailing measures lapse.

(355) On this basis, the Commission found it likely that Argentine exporting producers will increase their exports of biodiesel at subsidised prices to the Union market if the countervailing measures and therefore also the undertaking in force are allowed to lapse.

4. INJURY

4.1. **Definition of the Union industry and Union production**

(356) The like product was manufactured by 43 producers in the Union that were members of the EBB plus an estimated 20 other Union producers who are not EBB members. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

(357) The total Union production during the review investigation period was established at around 14 925 455 tonnes. The Commission established the figure on the basis of the updated response to the macro questionnaire submitted by EBB after the verification visit. EBB's data on Union biodiesel production were based on an external market intelligence provider called Stratas.

(358) Further to what was indicated in recital (16), in light of the revised Union production figure in the course of the investigation, the four sampled Union producers represented around 12 % of the total Union production of the like product.

4.2. **Union consumption**

(359) The Commission established the Union consumption on the basis of the sales volumes in the Union by the Union industry as submitted by EBB and verified at its premises and based on Comext for import data.

⁽¹³⁹⁾ <http://datos.energia.gob.ar/dataset/estadisticas-de-biodiesel-y-bioetanol/archivo/4e04bc74-8625-412c-acc2-48412f2509b4>.

(360) Union consumption developed as follows:

Table 4

Union consumption (tonnes)

	2020	2021	2022	RIP
Total Union consumption	17 052 598	17 411 472	18 082 244	18 543 184
<i>Index (2020 = 100)</i>	100	102	106	109

Source: EBB, Comext.

(361) Union consumption developed positively over the period considered, in line with the increasing mandates for biodiesel usage and blending in the Union.

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

(362) The Commission established the volume of imports on the basis of import statistics from Comext and GTA. The market share of the imports was established on the basis of the Union biodiesel consumption in Table 4, data on sales by Union producers as submitted by the applicant, Comext and GTA.

(363) Imports into the Union from the country concerned developed as follows:

Table 5

Import volume (tonnes) and market share

	2020	2021	2022	RIP
Volume of imports from Argentina (tonnes)	874 199	1 292 775	997 210	490 644
<i>Index (2020 = 100)</i>	100	148	114	56
Market share	5,1 %	7,4 %	5,5 %	2,6 %
<i>Index (2020 = 100)</i>	100	145	108	52

Source: EBB, Comext, GTA.

(364) Imports from Argentina fluctuated but overall decreased over the period considered (– 44 % overall). Their market share went down from 5,1 % in 2020 to 2,6 % in the review investigation period. It is noted that the undertaking referred to in recital (2) above remained effective throughout the period considered.

4.3.2. Prices of the imports from the country concerned and price undercutting

(365) The Commission established the prices of imports on the basis of Comext.

(366) The average price of imports into the Union from the country concerned developed as follows:

Table 6

Import prices (EUR/tonne)

	2020	2021	2022	RIP
Argentina	732	1 076	1 419	1 425
Index (2020 = 100)	100	147	194	195

Source: Comext.

(367) The price of imports from Argentina increased to a significant extent during the period considered (+ 95 % overall). The price increase should be seen in light of the undertaking referred to in recital (2) above and which remained effective throughout the period considered.

(368) Price undercutting of the imports was established on the basis of verified questionnaire replies.

(369) The Commission determined the price undercutting during the review investigation period by comparing:

- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Argentinian producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, including the countervailing duty, with appropriate adjustments for customs duties and post-importation costs.

(370) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The comparison, expressed as a percentage of the sampled Union producers' turnover during the review investigation period, showed that Argentinian prices were not undercutting the prices of the Union industry. The absence of undercutting should be seen in the light of the price undertakings offered by Argentinian exporters in 2019.

4.4. Imports from third countries other than Argentina

(371) The imports of biodiesel from third countries other than Argentina were mainly from China, the United Kingdom and Singapore.

(372) The volume of imports into the Union as well as the market share and price trends for imports of biodiesel from other third countries developed as follows:

Table 7

Imports from third countries

Country		2020	2021	2022	RIP
China	Volume (tonnes)	926 695	494 931	1 020 300	1 541 239
	Index (2020 = 100)	100	53	110	166
	Market share	5,4 %	2,8 %	5,6 %	8,3 %

Country		2020	2021	2022	RIP
	Average price (EUR/tonne)	995	1 258	1 645	1 577
	<i>Index (2020 = 100)</i>	100	126	165	158
United Kingdom	Volume (tonnes)	608 155	990 082	1 032 790	1 100 392
	<i>Index (2020 = 100)</i>	100	163	170	181
	Market share	3,6 %	5,8 %	6,1 %	6,5 %
	Average price (EUR/tonne)	1 027	1 361	1 615	1 297
	<i>Index (2020 = 100)</i>	100	132	157	126
Singapore	Volume (tonnes)	468 998	279 098	689 578	868 513
	<i>Index (2020 = 100)</i>	100	60	147	185
	Market share	2,8 %	1,6 %	4 %	5,1 %
	Average price (EUR/tonne)	1 202	1 922	1 388	1 495
	<i>Index (2020 = 100)</i>	100	160	116	124
Other third countries	Volume (tonnes)	1 551 084	1 390 427	2 191 348	2 544 445
	<i>Index (2020 = 100)</i>	100	90	141	164
	Market share	9,1 %	8 %	12,1 %	13,7 %
	Average price (EUR/tonne)	858	1 169	1 736	1 468
	<i>Index (2020 = 100)</i>	100	136	202	171
Total of all third countries except the country concerned	Volume (tonnes)	3 554 931	3 154 538	4 934 015	6 054 588
	<i>Index (2020 = 100)</i>	100	89	139	170
	Market share	20,8 %	18,1 %	27,3 %	32,7 %

Country		2020	2021	2022	RIP
	Average price (EUR/tonne)	968	1 310	1 643	1 469
	Index (2020 = 100)	100	135	170	152

Source: Comext (volume ⁽¹⁴⁰⁾ & average price ⁽¹⁴¹⁾) except for 2020 United Kingdom for which, absent of conclusive data in Comext, estimations of volumes and prices were made on the basis of GTA prices.

(373) During the review investigation period, the average import price from imports from third countries other than Argentina was generally higher than the import price from Argentina. However, prices of imports are not directly comparable due to differences in trade flows and/or feedstock used. Indeed, a meaningful comparison of biodiesel prices, volumes and market shares from different origins can only be made when acknowledging the product mix involved. In this respect, Chinese biodiesel was made out of feedstocks that would attract a higher price on the Union market due to a double-counting premium under the Renewable Energy Directives ('RED') whereas a major share of imports from third countries other than China was crop-based, as confirmed by, inter alia, EBB's 2023 Statistical report ⁽¹⁴²⁾, GAIN reports on China ⁽¹⁴³⁾ and the European Union ⁽¹⁴⁴⁾, market intelligence ⁽¹⁴⁵⁾ and a series of trade defence investigations made by the Commission ⁽¹⁴⁶⁾.

(374) In relation to imports from Singapore, the prices of such imports would not reflect actual market conditions. As to imports into the Union originating in the United Kingdom ⁽¹⁴⁷⁾, they were mostly traded goods ⁽¹⁴⁸⁾ possibly including position balancing at cross-border UK ⁽¹⁴⁹⁾/EU producers at transfer prices, that the Commission could not further trace. In addition, there are indications of abnormal trading practices in the sector in the United Kingdom

⁽¹⁴⁰⁾ Comext data for pure biodiesel and its blends.

⁽¹⁴¹⁾ Comext data for pure biodiesel only. Data for code 2710 19 43 29 for Singapore. Data for code 3826 00 10 for Argentina, UK and other third countries. Data for codes 2710 19 43 29 and 3826 00 10 for other countries excluding China (for the UK share included in other countries excluding China, only code 3826 00 10 was considered).

⁽¹⁴²⁾ EBB 2023 Statistical Report available at https://ebb-eu.org/wp-content/uploads/2024/03/EBB_Statistical_Report2023-Final.pdf (last viewed on 18 November 2024).

⁽¹⁴³⁾ GAIN. Biofuels Annual of 19 October 2023. China. Available at <https://fas.usda.gov/data/china-biofuels-annual-9> (last viewed on 18 November 2024).

⁽¹⁴⁴⁾ GAIN. Biofuels Annual of 14 August 2023. European Union. Available at <https://fas.usda.gov/data/european-union-biofuels-annual-3> (last viewed on 18 November 2024).

⁽¹⁴⁵⁾ In light of <https://www.reuters.com/business/energy/malaysian-2024-biofuel-output-seen-rising-if-b20-biodiesel-usage-expanded-2024-03-05/> (last viewed on 18 November 2024), Malaysian biodiesel is palm oil-based. For a worldwide overview, see page 27 of UFOP's report on global market supply 2023/2024, available at https://www.ufop.de/files/8217/0548/9837/UFOP-2116_Report_Global_Market_Supply_A5_EN_23_24_160124.pdf.

⁽¹⁴⁶⁾ For an example, see Commission Implementing Regulation (EU) 2019/1344 of 12 August 2019 imposing a provisional countervailing duty on imports of biodiesel originating in Indonesia (OJ L 212, 13.8.2019, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2019/1344/oj). Recital (32) reads: 'The investigation indicated that biodiesel produced in Indonesia is primarily palm oil methyl ester ("PME"), which is derived from palm oil ...'.

⁽¹⁴⁷⁾ For feedstocks in the United Kingdom, see for instance <https://www.gov.uk/government/statistics/bioenergy-crops-in-england-and-the-uk-2008-2023/bioenergy-crops-in-england-and-the-uk-2008-2023> and the application in the public file of the investigation by the Trade Remedies Service available at <https://www.trade-remedies.service.gov.uk/public/case/AD0058/>.

⁽¹⁴⁸⁾ Imports into the Union from United Kingdom, a country with a major domestic biodiesel demand, were deemed to be mostly traded goods as their volume in Table 12 of the provisional Regulation was basically double the total biodiesel production in that country. This is patent from Table C.41.1 of OECD/FAO (2022), OECD-FAO Agricultural Outlook 2022-2031, OECD Publishing, Paris, <https://doi.org/10.1787/f1b0b29c-en>. Also, pages 30-32 of the application in the public file of the investigation by the Trade Remedies Service available at <https://www.trade-remedies.service.gov.uk/public/case/AD0058/> noted that Greenergy group had major exporting activities. Table on page 27 (150 000–200 000 tonnes from Olleco plus Argent) of the same application and estimates on page 29 (320 000–370 000 tonnes for Greenergy) of the application suggest that production of biodiesel in the United Kingdom was around half a million tonnes (or slightly more).

⁽¹⁴⁹⁾ United Kingdom.

during the period considered ⁽¹⁵⁰⁾. Thirdly, the relevant authorities of the United Kingdom have been granting to oil companies inward processing authorisations for biodiesel imports, which facilitated the trading of non-UK origin biodiesel into the Union through the United Kingdom, blurring the statistics. Those practices have only recently come to an end ⁽¹⁵¹⁾ ⁽¹⁵²⁾.

4.5. Economic situation of the Union industry

4.5.1. General remarks

(375) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(376) As mentioned in recital (16), sampling was used for the assessment of the economic situation of the Union industry.

(377) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the macro questionnaire response submitted by the applicant. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(378) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past subsidisation.

(379) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

(380) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 8

Production, production capacity and capacity utilisation

	2020	2021	2022	RIP
Production volume (tonnes)	14 768 456	15 301 256	15 286 729	14 925 455
Index (2020 = 100)	100	104	104	101
Production capacity (tonnes)	21 360 776	21 525 776	21 925 776	21 933 276

⁽¹⁵⁰⁾Recitals (12) and (13) of Commission Implementing Decision (EU) 2024/1273 of 7 May 2024 terminating the investigation of the possible circumvention, by imports of biodiesel consigned from the People's Republic of China and the United Kingdom, whether declared as originating in the People's Republic of China and the United Kingdom or not, of the countervailing measures concerning imports of biodiesel originating in Indonesia, and terminating the registration of imports (OJ L, 2024/1273, 8.5.2024, ELI: http://data.europa.eu/eli/dec_impl/2024/1273/oj).

⁽¹⁵¹⁾<https://rtfa.org.uk/2024/07/23/uk-renewable-fuels-industry-calls-for-inward-processing-policy-to-be-made-more-transparent/> (last viewed on 18 November 2024).

⁽¹⁵²⁾<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/agriculture/040324-uk-to-instate-biofuel-import-duties-after-halting-exemptions> (last viewed on 18 November 2024).

	2020	2021	2022	RIP
<i>Index (2020 = 100)</i>	100	101	103	103
Capacity utilisation	69 %	71 %	70 %	68 %
<i>Index (2020 = 100)</i>	100	103	101	98

Source: EBB/Stratas for 2020-2023, applicant. Estimates by the applicant for the RIP (based on 'Stratas' data for 2022 and 2023).

(381) Production, production capacity and capacity utilisation were at relatively similar levels in the review investigation period as compared to 2020. However, the production volumes declined significantly in the review investigation period as compared to 2022.

4.5.2.2. Sales volume and market share

(382) The Union industry's sales volume and market share developed over the period considered as follows:

Table 9

Sales volume and market share

	2020	2021	2022	RIP
Sales volume on the Union market (tonnes)	12 623 468	12 964 160	12 151 019	11 997 951
<i>Index (2020 = 100)</i>	100	103	96	94
Market share	74 %	74,5 %	67,2 %	64,7 %
<i>Index (2020 = 100)</i>	100	101	91	87

Source: EBB.

(383) Over the period considered, the Union industry's market share dropped by almost 10 percentage points to reach a market share of 64,7 % in the review investigation period. The Union industry's sales volumes and corresponding market share started to fall in 2021.

4.5.2.3. Growth

(384) The Union industry experienced no growth in terms of production during the period considered despite the positive development of the consumption of biodiesel in that period. In fact, the sales volume and market share of the Union industry decreased during the reference period.

4.5.2.4. Employment and productivity

(385) Employment and productivity developed over the period considered as follows:

Table 10

Employment and productivity

	2020	2021	2022	RIP
Number of employees	5 307	5 801	6 066	5 897
<i>Index (2020 = 100)</i>	100	109	114	111

	2020	2021	2022	RIP
Productivity (tonnes/ employee)	2 783	2 638	2 520	2 531
Index (2020 = 100)	100	95	91	91

Source: EBB.

(386) The Commission noted that not all Union producers reported employment data to EBB with the same approach and that some estimates were needed for non-reporting companies, creating some shortcomings in the data available to the Commission regarding employment. In any event, the estimated number of employees presented above was considered to be reasonably accurate and adequate for the purposes of this investigation, namely as a significant part of the data was cross-checked by the Commission itself during the on-spot verification visits to sampled Union producers and the applicant.

4.5.2.5. Magnitude of the subsidisation margin and recovery from past dumping/countervailable practices

(387) The subsidisation margins of all the sampled exporting producers were above the *de minimis* level. The impact of the magnitude of the actual margins of subsidisation on the Union industry was, however, limited as prices of imports from Argentina resulted from undertakings.

(388) As noted in recital (3), the product under review has already been subject to several anti-dumping and anti-subsidy investigations.

(389) Existing anti-dumping and anti-subsidy measures against the USA (extended to consignments from Canada, with some exemptions ⁽¹⁵³⁾) were renewed during the period considered. There is no indication that those measures were ineffective.

(390) In 2020, the Union industry clearly showed signs of recovery following the conclusion of the original investigation and the imposition in 2019 of definitive countervailing measures against imports of biodiesel originating in Indonesia ⁽¹⁵⁴⁾.

(391) The Union industry was starting to recover from past injurious subsidisation of biodiesel from Argentina and Indonesia when an increasing volume of biodiesel imports from China at low prices arrived into the Union market. Chinese dumped imports had both volume and price effects during the period considered, including price suppression in the Union market, and a clearly negative impact on the Union industry's financial situation.

(392) The Union industry was materially injured by imports of Chinese biodiesel during the review investigation period. Anti-dumping measures against China covering the same period considered as the present review were provisionally imposed in August 2024 and then confirmed in February 2025 ⁽¹⁵⁵⁾.

⁽¹⁵³⁾ Commission Implementing Regulation (EU) 2022/731 of 12 May 2022 amending Implementing Regulation (EU) 2021/1266 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America and Implementing Regulation (EU) 2021/1267 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America (OJ L 136, 13.5.2022, p. 3, ELI: http://data.europa.eu/eli/reg_impl/2022/731/oj).

⁽¹⁵⁴⁾ Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia (OJ L 317, 9.12.2019, p. 42, ELI: http://data.europa.eu/eli/reg_impl/2019/2092/oj).

⁽¹⁵⁵⁾ Commission Implementing Regulation (EU) 2025/261 of 10 February 2025 imposing a definitive anti-dumping duty on imports of biodiesel originating in the People's Republic of China (OJ L, 2025/261, 11.2.2025, ELI: http://data.europa.eu/eli/reg_impl/2025/261/oj).

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

(393) The average unit sales prices of the Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 11

Sales prices in the Union & Unit cost of production

	2020	2021	2022	RIP
Average unit sales price in the Union on the total market (EUR/tonne)	799	1 068	1 518	1 355
Index (2020 = 100)	100	134	190	169
Unit cost of production (EUR/ tonne)	784	1 057	1 492	1 353
Index (2020 = 100)	100	135	190	172

Source: Questionnaire replies of sampled Union producers.

(394) From 2020 to 2022, sales prices followed trends in costs, both increasing by 90 % by 2022. In the review investigation period, the Union industry could not reflect the costs increase in its sales prices and was forced to sell almost at cost.

(395) At the end of the period considered, the gap between the unit cost of production and the unit sales price dropped and became barely EUR 2.

4.5.3.2. Labour costs

(396) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 12

Average labour costs per employee

	2020	2021	2022	RIP
Average labour costs per employee (EUR)	78 088	83 914	85 898	89 613
Index (2020 = 100)	100	107	110	115

Source: Questionnaire replies of sampled Union producers.

(397) On average, labour cost of the sampled Union producers increased by 15 % over the period considered. As labour cost represent less than 3 % of the cost of manufacturing of biodiesel, the increase in labour costs – which is not at odds with the average overall 12 % labour cost increase in the Union in the period 2020-2023 according to Eurostat ⁽¹⁵⁶⁾ – has a negligible impact on the state of the Union industry.

⁽¹⁵⁶⁾ Eurostat, Labour costs annual data – Nace Rev.2 (<https://ec.europa.eu/eurostat/databrowser/bookmark/995c4de3-9520-4cc1-9dc2-3c78325a2fc8?lang=en>).

4.5.3.3. Inventories

(398) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 13

Inventories

	2020	2021	2022	RIP
Closing stocks (tonnes)	170 541	140 162	184 957	230 610
<i>Index (2020 = 100)</i>	100	82	108	135
Closing stocks as a percentage of production	1,2 %	0,9 %	1,2 %	1,6 %
<i>Index (2020 = 100)</i>	100	75	100	133

Source: Questionnaire replies of sampled Union producers.

(399) The Commission had previously stated that the level of stocks is a less meaningful indicator for this type of industry ⁽¹⁵⁷⁾. The Commission confirmed that the Union industry endeavoured to keep stocks low, but this was not always possible in light of the market situation. It also noted that, given that the product under review is sold in bulk, a single delivery can comprise a significant volume of more than 10 000 tonnes which can have a significant impact on the stock level, depending on the precise transaction date.

4.5.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(400) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 14

Profitability, cash flow, investments and return on investments

	2020	2021	2022	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2 %	1 %	1,8 %	0,1 %
<i>Index (2020 = 100)</i>	100	50	90	5
Cash flow (EUR)	90 293 613	– 26 971 004	– 70 149 695	– 41 725 753
<i>Index (2020 = 100)</i>	100	– 30	– 78	– 46
Investments (EUR)	92 568 706	43 686 329	62 751 636	105 304 643
<i>Index (2020 = 100)</i>	100	47	68	114
Return on investments	8,4 %	5,8 %	10,5 %	1,3 %
<i>Index (2020 = 100)</i>	100	69	126	15

Source: Questionnaire replies of sampled Union producers.

⁽¹⁵⁷⁾ Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2019/244/oj), recital (394).

- (401) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry was at very low levels during the period considered and it dropped to break-even in the review investigation period.
- (402) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow deteriorated strongly during the period considered and was highly negative as from 2021.
- (403) The investments in the sampled companies fluctuated during the period considered. In general, investments are approved years before their implementation. Investments in the last part of the period considered were projects foreseen since long and concerned only two companies.
- (404) The return on investments is the profit in percentage of the net book value of investments. It developed negatively, in line with profitability, and was very low during the whole period considered and at a mere 1,3 % in the review investigation period due in particular to the very low level of profitability.
- (405) As to the Union industry's ability to raise capital, it was hindered by the highly negative cashflow as from 2021.

4.6. **Conclusion on injury**

- (406) The above assessment of economic macro- and micro-indicators shows that the Union industry was suffering material injury in the review investigation period, as it lost significant market share and its sales prices increase was insufficient to pass on the strong increase in its costs of production, resulting in the decline of its profitability, which negatively affected return on investments and cash flow. The fact that a few indicators (production capacity, number of employees) did not deteriorate does not undermine the finding of injury.
- (407) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation during the review investigation period.

5. CAUSATION

5.1. **Effects of the subsidised imports**

- (408) Over the period considered the import volumes from Argentina decreased by 44 %, as shown in Table 5, whereas consumption grew by around 9 % (as shown in Table 4). This resulted in a market share drop of imports from Argentina by 2,4 percentage points from 5,1 % to 2,7 %, at a time when the market share of the Union industry went down by over 9 percentage points to reach 64,7 % in the review investigation period.
- (409) The prices of sampled Argentinian exporters, representing 68 % of Argentinian biodiesel imports into the Union during the review investigation period, did not undercut Union prices. Given that prices for Argentinian imports in Table 6 for the review investigation period were higher than prices of sampled Argentinian exporters, the Commission concluded that, overall, prices of Argentinian imports did not undercut Union industry prices in the review investigation period.
- (410) CARBIO submitted that imports of Argentinian biodiesel were not the cause of any injury that Union producers could have suffered.
- (411) The investigation did not allow concluding that subsidised imports from Argentina contributed to the material injury suffered by Union biodiesel producers during the review investigation period.

5.2. Conclusion on causation

- (412) The above analysis shows no overall increase in the volume and market share of the imports originating in Argentina during the period considered. The undertakings in place entailed that prices of subsidised Argentine imports were high enough and could not have prevented the Union industry from achieving sustainable pricing and reasonable profit margins.
- (413) The Union industry lost significant market share to the benefit of namely dumped waste-based biodiesel from China. The Commission could not establish price injury caused by imports from Argentina.
- (414) On the basis of the above, the Commission concluded that, in light of their price level, the subsidised imports from the country concerned could not have caused material injury to the Union industry observed during the review investigation period.

6. LIKELIHOOD OF RECURRENCE OF INJURY CAUSED BY IMPORTS FROM ARGENTINA

- (415) The Commission concluded in recital (407) that the Union industry suffered material injury during the review investigation period. The Commission also concluded in the section above that the injury to the Union industry observed during the review investigation period could not have been caused by subsidised imports from Argentina mainly due to their price level which is influenced by the existence of undertaking. The material injury suffered by the Union industry during the review investigation period was caused by the dumped imports of biodiesel from China ⁽¹⁵⁸⁾. The Commission considered that, in the absence of undertakings, the impact of the magnitude of the actual margins of subsidisation on the Union industry would not have been negligible, given the volume of imports from Argentina during the period considered and the nature of the product, which is a commodity product. Therefore, the Commission assessed, in accordance with Article 18(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the subsidised imports from Argentina if the measures in force were allowed to lapse.
- (416) In this regard, the Commission examined the production capacity and spare capacity in Argentina, the relationship between prices in the country concerned, export prices to the Union and export prices to other third countries; the likely price levels of imports from Argentina in the absence of countervailing measures; the attractiveness of the Union market and the impact of the potential import volume and likely import price levels on the Union industry's situation should the measures be allowed to lapse.
- (417) As shown in Table 3 and GAIN reports ⁽¹⁵⁹⁾, and as concluded in recital (340), exporting producers in the country concerned have significant spare capacity and therefore, the ability to substantially increase biodiesel production if the market situation is favourable. In its comments after initiation, CARBIO contested this point on the grounds that there would not be investments in the foreseeable future, that biodiesel production and production capacity in Argentina had dropped and that this trend would continue in the future as a result of global warming effects in Argentina. Notwithstanding the challenges faced in agriculture because of global warming, it remains uncontested that production capacity in Argentina amounted to over five times domestic consumption in 2024 ⁽¹⁶⁰⁾ and to around 25 % of biodiesel consumption in the Union during the review investigation period ⁽¹⁶¹⁾. CARBIO's statements were thus dismissed.

⁽¹⁵⁸⁾ Commission Implementing Regulation (EU) 2025/261 of 10 February 2025 imposing a definitive anti-dumping duty on imports of biodiesel originating in the People's Republic of China (OJ L, 2025/261, 11.2.2025, ELI: http://data.europa.eu/eli/reg_impl/2025/261/oj).

⁽¹⁵⁹⁾ Table 5 of GAIN Report – Biofuels Annual, Argentina, August 5, 2024. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf.

⁽¹⁶⁰⁾ Table 5 of GAIN Report – Biofuels Annual, Argentina, August 5, 2024. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf.

⁽¹⁶¹⁾ Table 5 of GAIN Report – Biofuels Annual, Argentina, August 5, 2024. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf.

- (418) In a submission dated 15 March 2024, CARBIO submitted that there is no likelihood of recurrence of an increase in Argentinian biodiesel imports in the absence of measures, because of the loss of attractiveness of the Union market following certain legislative initiatives (ranging from some Member States having phased out the use of soybean oil to the Union favouring waste-based biodiesel through EU's Deforestation-free supply chain initiatives), the new blending mandates in Argentina and the possibility for Argentina to sell biodiesel in new markets, namely Brazil ⁽¹⁶²⁾.
- (419) The Commission found CARBIO's statements unsupported by facts. As to the alleged unlikely recurrence of an increase in Argentinian biodiesel imports into the Union, the Commission noted that the Union is the largest consumer of biodiesel in the world, accounting for some 23 % of global consumption in 2023 ⁽¹⁶³⁾. Despite the artificially high prices in Argentina's domestic market referred to in recital (239) and the new blending mandates in Argentina, domestic biodiesel consumption in the country concerned was very low and represented 0,9 % of Argentine biodiesel production during the review investigation period. Biodiesel exports were the main pillar of Argentine biodiesel industry and, although exports varied depending on market conditions, the Union remained by far the main export market for Argentine biodiesel year after year, as shown in the questionnaire reply submitted by the Government of Argentina ⁽¹⁶⁴⁾. As important as exports are for Argentine industry, Argentina was confronted with increasing difficulties to sell abroad. As noted in recital (350), the Peruvian and USA authorities imposed high anti-subsidy and anti-dumping measures on Argentine biodiesel which truncated their imports from Argentina ⁽¹⁶⁵⁾. According to Argentine statistics, in 2024 exports of biodiesel from Argentina to destinations other than the Union were basically limited to Canada, as noted in recital (351). Exports to Canada accounted for less than 10 % of Argentine exports and were at less attractive prices compared to export prices to the Union. There were no significant prospects for Argentine producers to export to other markets ⁽¹⁶⁶⁾. Notwithstanding the legislative changes with an alleged bearing on the attractiveness of the Union biodiesel market, the Union is committed to boosting alternatives to traditional fossil diesel, including via conventional biodiesel, as confirmed by RED III ⁽¹⁶⁷⁾. In sum, the Union market was and is attractive in terms of size, price and accessibility, thus, there is a strong likelihood that the expiry of the countervailing measures in force would result in a significant increase of subsidised imports from the country concerned.
- (420) In addition, as shown in Table 5, during the period considered, the import volumes from the country concerned remained material. There are 32 biodiesel plants in Argentina, all using vegetable oil from soybean crushing as feedstock ⁽¹⁶⁸⁾, i.e. a feedstock that, like the bulk of Union production, does not attract a double-counting premium under RED and thus draws lower prices in the market than biodiesel made out of feedstocks listed in Annex IX of RED II. Biodiesel is a commodity and competition between Argentine biodiesel and Union-made biodiesel in the market is thus driven by prices.
- (421) Following disclosure, CARBIO noted that the absence of measures on Argentinian imports would in all likelihood not result in a recurrence of material injury to the Union industry on the grounds that: (1) imports of biodiesel originating in Argentina have significantly decreased over the last few years and the Commission's assessment of available spare capacities in Argentina ignored the Commission's own conclusion that biodiesel producers serving the Argentinean domestic mandate are legally prevented from exporting; (2) there is no price undercutting and the undertaking offsets any effects of any alleged subsidisation; and (3) the cause of any injury suffered by Union industry is attributed to dumped Chinese biodiesel imports, as also confirmed by the Commission.

⁽¹⁶²⁾ In its submission t24.002793, CARBIO noted an increase in the biodiesel mandate in Brazil to 14 % as of March 2024, and to 15 % as of March 2025 (up from the current 12 %). The party added that Brazil had approved the use of imported biodiesel in the mandatory blend as of January 2024.

⁽¹⁶³⁾ <https://www.statista.com/statistics/1485491/biofuel-consumption-by-type-region-world/>.

⁽¹⁶⁴⁾ t24.007393.

⁽¹⁶⁵⁾ GAIN Report – Biofuels Annual, Argentina, August 5, 2024, page 20. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf.

⁽¹⁶⁶⁾ GAIN Report – Biofuels Annual, Argentina, August 5, 2024. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf. Page 19 reads: 'There are no exports projected to the United States, Peru, or other discretionary markets.'

⁽¹⁶⁷⁾ For more information: https://energy.ec.europa.eu/topics/renewable-energy/renewable-energy-directive-targets-and-rules/renewable-energy-directive_en.

⁽¹⁶⁸⁾ GAIN Report – Biofuels Annual, Argentina, August 5, 2024. Available at https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels+Annual_Buenos+Aires_Argentina_AR2024-0011.pdf.

- (422) The Commission disagreed with CARBIO's statements above. On the first point, it is noted that CARBIO acknowledged the existence of available spare capacities that could potentially be exported to the Union (even though to a lower extent than concluded by the Commission). Moreover, the investigation found in recital (40) that a biodiesel producer in the group of a sampled exporting producer produced biodiesel later sold both on the domestic and on the export market. For such a biodiesel producer, the allocation of a quota within the biodiesel mandate implied a lower capacity devoted to export. Therefore, the capacity for domestic and the capacity for export market interact. On the second issue, the Commission noted that the undertaking in force would not offset any effects of any alleged subsidisation in the absence of the current measures to the extent that the undertaking is linked to the existence of the countervailing measures themselves. In other words, in absence of measures and the undertaking, the undercutting would be likely to recur. As to the third point, although the review investigation concluded that injury observed during the review investigation period was not caused by imports from Argentina, it also concluded that if the measures are not maintained the re-appearance of Argentinian imports at unfair prices would cause injury and would halt the Union industry's recovery from injury which is expected as a result of the recent imposition of anti-dumping duties on dumped Chinese imports.
- (423) Considering the findings summarised in this section, it is thus expected that, if measures are allowed to lapse, Argentinian exporters would have an incentive to export to the Union at prices undercutting the sales prices of Union producers at levels similar to those found in the original investigation. This would cause price pressure on the Union industry that would then lose sales volumes and/or be obliged to decrease their price levels, with the consequent impact on profitability.
- (424) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of subsidised imports from Argentina and material injury caused by subsidized imports from Argentina would be likely to recur.

7. UNION INTEREST

- (425) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing countervailing measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, traders and users.

7.1. Interest of the Union industry

- (426) The Union industry is composed of more than 60 producers across the Union and provides direct employment to close to 6 000 people. No producer opposed the investigation.
- (427) The Commission determined that, if measures were not renewed, the Union industry, which operated at break-even in the review investigation period, would become loss-making and face insolvencies, due to a surge of low-priced biodiesel from Argentina which would further compromise the Union industry's viability.
- (428) The continuation of the existing measures would enable the Union industry to pursue its recovery process and eventually achieve sustainable profitability levels.
- (429) The Commission therefore concluded that the renewal of the measures would be in the interest of the Union industry.

7.2. Interest of unrelated importers, traders and distributors

- (430) One trader active in the Union registered as interested party in the proceeding but made no representations.
- (431) Companies involved in fossil diesel production and distribution also involved in the mandatory blending of fossil diesel with biodiesel were invited to complete questionnaires upon initiation. The only one that replied to the questionnaire claimed to have insufficient knowledge to express its position as to a possible renewal of the measures. For the respondent, biodiesel was a very small part of the overall business activity. In light of this, the party's position and the fact that the party failed to provide most of the information at the required level of detail, i.e. limited to those activities involving (Argentinian) biodiesel, the Commission concluded that there was no indication that the maintenance of the measures would have a material impact on it.

- (432) CARBIO claimed that the recent imposition on anti-dumping duties on imports of biodiesel from China would lead to the elimination of China as a supply source and the Union market will therefore need increased imports of biodiesel in the coming years. However, the anti-dumping measures on Chinese imports are at moderate levels, ranging from 10 % to 35,6 %, and cannot be considered prohibitive. Moreover, alternative sources of supplies without trade defence measures are available. This is evidenced by the significant market share of imports from several other third countries (see Table 7). The Commission considered that the continuation of the existing measures would enable the Union industry to pursue its recovery process and further supply its domestic market.
- (433) The Commission therefore concluded that the renewal of the measures would not entail a significant detriment to the interest of importers, traders and distributors. These economic operators are part of the supply chain and will pass on costs resulting from the measures, if any in the absence of undertakings, to users and consumers.

7.3. Interest of users and consumers

- (434) There are no indications that the existing measures have negatively affected the Union users of biodiesel. There is no evidence that any of the existing measures had an adverse impact on their profitability.
- (435) It is noted that final fuel prices rather follow the price of fossil crude oil ⁽¹⁶⁹⁾ and that around 40 % the price of diesel in petrol stations in the EU is taxes ⁽¹⁷⁰⁾, which can be modulated depending on the various interests or needs. Also, incentives for using biodiesel may apply ⁽¹⁷¹⁾. Bearing in mind these facts and the small percentage of biodiesel (typically, no more than 10 %) that is generally mixed into the fossil diesel, no evidence was found that the renewal of measures would be clearly against the interests of either users or consumers or would outweigh the positive consequences of maintaining the status quo for the Union industry.

7.4. Other factors

- (436) In addition, the Commission considered that maintenance of existing measures will boost sustainability and greenhouse gas emission reduction efforts in the supply chain and will have a positive effect on the supplier industry in the Union as revenue and capacity utilisation will increase.

7.5. Conclusion on Union interest

- (437) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of biodiesel originating in Argentina.

8. COUNTERVAILING MEASURES

- (438) On the basis of the conclusions reached by the Commission on continuation of subsidisation, likelihood of recurrence of injury caused by imports from Argentina and Union interest, the countervailing measures on biodiesel from Argentina should be maintained.
- (439) To minimize the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual duties. The application of individual duties is only applicable upon presentation of a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Until such invoice is presented, imports should be subject to the countervailing duty applicable to 'all other imports originating in Argentina'.

⁽¹⁶⁹⁾ <https://www.bmwk.de/Redaktion/EN/Artikel/Energy/petroleum-fuel-prices.html>.

⁽¹⁷⁰⁾ In its *Weekly Oil Bulletin*, the Commission provides an overview per EU member state of the average prices for diesel and petrol (Euro Super-95) and the tax share of the final price. See https://energy.ec.europa.eu/data-and-analysis/weekly-oil-bulletin_en.

⁽¹⁷¹⁾ More details by the association FuelsEurope can be found in the chart available here: https://www.fuels europe.eu/uploads/files/modules/documents/file/1688474562_PHVWHHTy6LUHcLLbJzKRaj44vRiRLrTghMB8aXzf.pdf#:~:text=No%20tax%20incentive%3A%20Biofuels%20do%20not%20bene%EF%AC%81t%20from,a%20percentage%20of%20fossil%20fuel%20content%20above%2070%25.

- (440) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (441) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(3) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (442) Recital (2) above noted that Commission accepted undertaking offers by Implementing Decision (EU) 2019/245. The Commission had considered that they eliminate the injurious effects of the subsidised imports and limit to a sufficient degree the risk of circumvention.
- (443) CARBIO and the GOA claimed that, should measures in force be renewed, the existing undertaking should be continued. CARBIO deemed the undertaking an effective mechanism, acting as a price stabilisation factor for import prices of biodiesel into the Union given the high prices at which Argentinean biodiesel was traded and the negative undercutting margin in the request (– 2 %). CARBIO noted that its members were disciplined and committed to continuing their efforts in a renewed agreement.
- (444) The Commission noted that the current expiry review is meant to assess whether the continuation of the countervailing measures is warranted. Any assessment of the undertaking in force is outside the scope of the current expiry review.
- (445) Following the Commission's intention to apply Article 28(1) of the basic Regulation to the GOA, EBB called instead for the removal of the undertakings, justified by the lack of cooperation of the GOA. The EBB raised in particular the role of the governments in the undertaking pursuant to the basic Regulation. Moreover, the EBB highlighted that one of the missing information listed in recital (71), concerning prices and pricing policies of soybean and soybean oil producers, was essential to establish the minimum import price under the undertaking. In addition, the EBB noted that the GOA did not provide information concerning a very liquid and transparent market, such as the market for soybeans in Argentina, and that Molinos Agro confirmed in its questionnaire reply that the market for soybeans was as such. Finally, the lack of cooperation of the GOA would have breached the trust on which the acceptance of the undertaking was based.
- (446) The GOA and CARBIO contended that the price information which could have been provided by individual soybean suppliers in the context of the current expiry review was different from the price of soybeans in the Argentinian domestic market, which is the relevant factor for determining the minimum import price. The GOA also pointed out that the lack of submission of the same information in the original investigation did not prevent the agreement of an undertaking. Accordingly, the GOA and CARBIO submitted the GOA's lack of cooperation did not constitute a breach of the undertaking, considering also the fact the GOA was not a party to it. Moreover, according to the GOA, the questionnaire reply by Molinos Agro shows that, if the market is transparent, there is no practical use to maintain a registry of soybean producers. Finally, CARBIO submitted that the continuation of the undertaking was in the Union interest.
- (447) The Commission noted that any assessment of the undertaking in force is outside the scope of the current expiry review. Therefore, this claim was not considered.
- (448) Following the final disclosure, CARBIO reiterated the same comments as set out in recital (443), which were already addressed by the Commission in recital(444).

- (449) Following final disclosure, the EBB reiterated that the Commission should assess the impact of the lack of cooperation of the GOA in the present investigation with regard to the undertaking in force. They argued that this should be done either in the context of the present expiry review, or in the context of a separate assessment. Additionally, the EBB considered that the absence of accurate information concerning the soybean market in Argentina would make it impossible for the Commission to establish a minimum import price, since the latter is calculated based on the monthly soybean oil price quotations published by the GOA. Therefore, according to the EBB, the undertaking had no justification and had to be suspended.
- (450) The Commission reiterated that any assessment of the undertaking in force is outside the scope of the current expiry review. However, in principle, this does not prejudice the initiation of an assessment of whether or not a breach of the undertaking has occurred, which in any case remains separate from the current expiry review. Therefore, this claim was not considered in the context of this investigation.
- (451) Moreover, the EBB provided a number of claims concerning the relationship between the information not provided by the GOA and the determination of the minimum import price.
- (452) The Commission noted that any assessment of the undertaking in force is outside the scope of the current expiry review. Therefore, these claims were not considered.
- (453) Whenever the Commission withdraws, under Article 13(9) of the basic Regulation, its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.
- (454) The individual company duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in Argentina and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other imports originating in Argentina'. They should not be subject to any of the individual duty rates.
- (455) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽¹⁷²⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (456) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. Comments were received from the GOA, CARBIO and the EBB and were addressed in the relevant sections above.
- (457) An exporter or producer that did not export the product concerned to the Union during the period that was used to set the level of the duty currently applicable to its exports may request the Commission to be made subject to the anti-subsidy duty rate for cooperating companies not included in the sample. The Commission should grant such request, provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the period that was used to set the level of the duty applicable to its exports; (ii) it is not related to a company that did so and thus is subject to the anti-subsidy duties; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

⁽¹⁷²⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

(458) In view of Article 109 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council ⁽¹⁷³⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(459) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing is imposed on imports of fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend, currently falling under CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 33), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 33), ex 1518 00 95 (TARIC code 1518 00 95 21), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 91 33), ex 2710 19 42 (TARIC codes 2710 19 42 21 and 2710 19 42 29), ex 2710 19 44 (TARIC codes 2710 19 44 21, 2710 19 44 29 and 2710 19 44 33), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 33), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 33), 2710 20 11, 2710 20 16, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 14 and 3824 99 92 17), 3826 00 10 and ex 3826 00 90 ⁽¹⁷⁴⁾ (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 33), and originating in Argentina.

2. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Countervailing duty	TARIC additional code
Aceitera General Deheza S.A.	33,4 %	C493
Bunge Argentina S.A.	33,4 %	C494
LDC Argentina S.A.	26,2 %	C495
Molinos Agro S.A.	25,0 %	C496
Viterra Argentina S.A.	25,0 %	C497
Vicentin S.A.I.C.	25,0 %	C498
COFCO International Argentina S.A.	28,2 %	C490
Cargill S.A.C.I.	28,2 %	C491
All other imports originating in Argentina	33,4 %	C999

⁽¹⁷³⁾ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>).

⁽¹⁷⁴⁾ As currently defined in Commission Regulation (EU) 2024/2522 of 23 September 2024 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L, 2024/2522 31.10.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/2522/oj). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN and TARIC codes taken together.

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' Until such invoice is presented, the duty applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Imports declared for release into free circulation shall be exempt from the countervailing duty imposed by Article 1, provided that they are manufactured, shipped and invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Implementing Decision (EU) 2019/245, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Implementing Decision.

2. The imports mentioned in paragraph 1 shall be exempt from the countervailing duty on condition that: (a) such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in Annex 1 of this Regulation; and (b) such imports are accompanied by an Export Undertaking Certificate according to Annex 2 of this Regulation; and (c) the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

3. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation: (a) whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph and paragraph 2 are not fulfilled; or (b) when the Commission withdraws its acceptance of the undertaking pursuant to Article 13(9) of Regulation (EU) 2016/1037 in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

The companies from which undertakings are accepted by the Commission and whose names are listed in the Implementing Decision (EU) 2019/245 as subsequently amended, and subject to certain conditions specified therein, will also issue an invoice for transactions which are not exempted from the countervailing duty. This invoice is a commercial invoice containing at least the elements stipulated in Annex 3 to this Regulation.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 May 2025.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX 1

The following elements shall be indicated in the Commercial Invoice accompanying the Company's sales to the European Union of goods, which are subject to the Undertaking:

- (1) The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
- (2) The name of the Company issuing the Commercial Invoice and the name of the Company manufacturing the goods.
- (3) The Commercial Invoice number.
- (4) The date of issue of the Commercial Invoice.
- (5) The TARIC additional code under which the goods on the invoice are to be customs-cleared at the European Union frontier.
- (6) The exact plain language description of the goods and:
 - technical specifications of the company product code number (CPC),
 - the company product code number (CPC),
 - CN code,
 - quantity (to be given in units expressed in Metric Tons).
- (7) The description of the terms of the sale, including:
 - price per unit (Metric Ton),
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
- (8) Name of the Company acting as an importer to which the invoice is issued directly by the Company.
- (9) The name of the official of the Company that has issued the Commercial Invoice and the following signed declaration:

'I, the undersigned, certify that the goods sold for export to the European Union covered by this invoice were manufactured by (Company name and address) (TARIC additional code) in Argentina within the scope and under the terms of the Undertaking accepted by the European Commission through Implementing Decision (EU) 2019/245. I declare that the information provided in this invoice is complete and correct.'

ANNEX 2

Export undertaking certificate

The following elements shall be indicated in the Export Undertaking Certificate to be issued by CARBIO for each Commercial Invoice accompanying the Company's sales to the European Union of goods which are subject to the Undertaking:

- (1) The name, address and telephone number of the Cámara Argentina de Biocombustibles ('CARBIO').
- (2) The name of the company mentioned in Implementing Decision (EU) 2019/245 issuing the Commercial Invoice and the name of the Company manufacturing the goods.
- (3) The Commercial Invoice number.
- (4) The date of issue of the Commercial Invoice.
- (5) The TARIC additional code under which the goods on the invoice are to be customs cleared at the European Union frontier.
- (6) The exact description of the goods, including
 - the technical specification of the goods, the company product code number (CPC) (if applicable),
 - CN code.
- (7) The precise quantity in units exported expressed in Metric Tons.
- (8) The number and expiry date (three months after issuance) of the certificate.
- (9) The name of the official of CARBIO that has issued the certificate and the following signed declaration:

'I, the undersigned, certify that this certificate is given for direct exports to the European Union of the goods covered by the Commercial Invoice accompanying sales made subject to the undertaking and that the certificate is issued within the scope and under the terms of the undertaking offered by [company] and accepted by the European Commission through Implementing Decision (EU) 2019/245. I declare that the information provided in this certificate is correct and that the quantity covered by this certificate is not exceeding the threshold of the undertaking.'
- (10) Date.
- (11) The signature and seal of CARBIO.

ANNEX 3

The following elements shall be indicated in the Commercial Invoice accompanying the Company's sales to the European Union of goods, which are subject to the countervailing duties:

- (1) The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO COUNTERVAILING DUTIES'.
 - (2) The name of the Company issuing the Commercial Invoice and the name of the Company manufacturing the goods.
 - (3) The Commercial Invoice number.
 - (4) The date of issue of the Commercial Invoice.
 - (5) The TARIC additional code under which the goods on the invoice are to be customs-cleared at the European Union frontier.
 - (6) The exact plain language description of the goods and:
 - technical specifications of the company product code number (CPC),
 - the company product code number (CPC),
 - CN code,
 - quantity (to be given in units expressed in Metric Tons).
 - (7) The description of the terms of the sale, including:
 - price per unit (Metric Tons),
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
 - (8) The name and signature of the official of the Company that has issued the Commercial Invoice.
-