USDA Foreign Agricultural Service

GAIN Report

Global Agriculture Information Network

Template Version 2.09

Voluntary Report - Public distribution

Date: 1/27/2009

GAIN Report Number: GM9002

Germany

Bio-Fuels

EU action requires Germany to revise changes to biofuel law

2009

Approved by:
Bobby Richey Jr., Agricultural Counselor
U.S. Embassy Berlin

Prepared by:
Sabine M. Lieberz, Agricultural Specialist

Report Highlights:
Because of EU objections Germany is expected to drop its proposed exclusion of soybean oil based biofuels from being eligible for German incentives and mandates. This would revive the use of soybean based biodiesel in Germany, which had been stalled since the release of the German draft legislation. However, the revised act will still exclude biofuels which have benefitted from state aids from receiving the benefits. This is expected to also pertain to imported U.S. biodiesel. Discussions on implementation of sustainability criteria are still ongoing.

Includes PSD Changes: No
Includes Trade Matrix: No
Annual Report
Berlin [GM1]
[GM]

On January 19, 2009, the European Commission (COM) extended the stand still period for the German "**Draft Law on the Amendment of the Promotion of Biofuels**" (for details on the draft act see background section below) until October 19, 2009, on the grounds that

- Sustainability criteria are included in the EU directive on the use of energy from renewable resources (RES directive)[1];
- Some of the provisions in the German draft stand in contradiction with the RES;
- COM questioned the WTO/GATT compatibility of singling out soybean oil and palm oil compared to other feedstock with regards to sustainability requirements;
- The draft lacked clarity especially regarding the entry into force of sustainability criteria which would have negative effects for planning purposes of the industry.

German Reaction

As a result of the COM action, German Government (GOG) officials have indicated that the GOG will proceed with those parts of the law that the COM did not criticize, namely:

- o the exclusion of previously supported biofuels (for example B99) from the benefits,
- o the reduction in the biofuel quota/mandate increase, and
- o the reduction in the tax increase.

An amended draft law will be up for vote in the Bundestag (comparable to the House of Representatives) in February or early March. For companies wanting to use soybean oil in their biodiesel production, there is a theoretical threat that the Bundestag might disagree with the GOG plan and will proceed with the original draft. However, as this would make GOG liable if a company sued the GOG, it is unlikely that the Bundestag would go down that road. Once this vote is taken, companies would have legal certainty regarding the eligibility of soybean oil based biofuels. Procedurally, however, the law could be formally implemented at the earliest in April.

German Sustainability Standards versus EU Directive

The EU RES directive of December 2008 supersedes Germany's own draft sustainability act[2] which was notified to the EU on December 12, 2007 as "Draft order on requirements for the sustainable production of biomass for use as biofuel" (Biomass Sustainability Order - German designation BioNachV). The BioNachV also contained sustainability criteria and default values, similar but not equal to those stated in the RES. The RES gives the member states 18 months to implement the EU directive into national law. The GOG, however, wants to implement the RES as soon as possible.

For legislative reasons, Germany will implement the EU RES in two separate laws, one for transport fuels and one for electricity generation. According to government sources, Germany aspires to implement the RES in a 1:1 format without any additional German requirements and to have the drafts ready by mid-2009. However, there are still a number of issues that have to be resolve between the different ministries involved (finance, environment, economics, and agriculture). This might entail a longer timeframe. Also, it is not clear, yet, how compliance with the sustainability criteria will be certified.

---

[1] EU directive 98/34/EC, article 9 paragraph 4 prohibits member states to adopt draft technical regulations earlier then 12 months after notifications if the COM declares that the draft refers to an issue for which a proposal has been submitted to the Council.

[2] Notification 2007/679/D
http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2007&inum=679&lang=EN&sNLang=EN

Comment: The objection by the COM likely solves the immediate concerns for U.S. soybean and soybean oil exports that are destined for local biodiesel production in Germany. It will not solve the problem for U.S. biodiesel exports (B99). In the long run, the final details of the sustainability criteria and how they are implemented could affect future U.S. exports of biofuels and feedstocks for biofuels. A critical point in this regard will be how compliance with the sustainability criteria will be certified or assessed. Depending on the design, any prospective compliance certification system could potentially further or hamper future U.S. exports.

Back ground on the German Draft Law on the Amendment of the Promotion of Biofuels

This act was proposed by the GOG in October 2008 and contained changes to the German biofuels support program (for detail see GAIN report GM8047). The proposed changes include a reduction in both the increase of German biofuels mandates as well as in the increase in the energy tax for biodiesel. In addition, the proposed legislation contained several provisions that the U.S. viewed as unfair protectionist measures, particularly as it relates to soybeans. The draft act proposed disqualifying biofuels from being counted against the biofuel mandates and denying receipt of any tax incentives if

- The biofuel was made with soybean oil and/or palm oil unless and until the German Government implements a sustainability criteria law for biofuels and it can be proven that the biofuel in question was produced in compliance with these criteria.
- The biofuel had previously received state aid. The GOG will publish a list of state aids that will fall under this regulation in its federal register. It is expected that the U.S. blender's credit will be on the list. This would put imports of U.S. biodiesel at a competitive disadvantage[3].

The draft law was notified to the EU (notification 2008/441/D[4]) for evaluation of compliance with EU state aid regulations because it contained changes to the existing tax incentives for biofuels.

Related Reports:

Report number	Title	Date released
GM8051	Read-out from Fuels of the Future Congress in Berlin http://www.fas.usda.gov/gainfiles/200812/146306793.pdf	12/08/2008
GM8047	German Government Modifies Biofuel Laws http://www.fas.usda.gov/gainfiles/200810/146296202.pdf	10/23/2008
E48140	EU Member States Revise Biofuel Targets http://www.fas.usda.gov/gainfiles/200812/146306731.pdf	12/03/2008
E48063	EU Biofuels Annual Report http://www.fas.usda.gov/gainfiles/200812/146306731.pdf	05/30/2008

[3] U.S. biodiesel that benefitted from the blenders' credit (B99) could still be imported into Germany. However, it would not be eligible for the German tax incentives or mandates. At the current market situation, this would make U.S. B99 uncompetitive.

[4] Notification 2008/441/D: http://ec.europa.eu/enterprise/tris/pisa/app/search/index.cfm?fuseaction=pisa_notif_overview&iYear=2008&inum=441&lang=EN&sNLang=EN