

## Notice to the Trade

### **Imports to the European Union (EU) Member States of US soybeans intended to be used for the production of biofuels and requiring compliance with the EU Renewable Energy Directive (2009/28/EC).**

To all concerned,

We are pleased to convey for your use documents intended to support the import of US soybeans to Member States of the EU. Attached you will find:

1. An "RED Status Letter" dated November 14, 2011, from Ambassador Islam A. Siddiqui of the Office of US Trade Representative and Acting Under Secretary Michael Scuse of the United States Department of Agriculture. The letter explains the US position that, based on the framework of US conservation programs, additional certification (which might include deployment of "schemes" provided for under the RED) is unnecessary.
2. An "FGIS RED Statement" that FGIS will make available for shipments of US soybeans and other commodities. The FGIS statement indicates that US soybeans are produced in accordance with the framework of US conservation programs. In this regard, we note that USDA APHIS PPQ form 572 provides for Certified Origin of shipments (box 7a).
3. A letter dated September 22, 2011, from EU DG Lowe to Member State authorities providing important background on the EU intent and current approach and flexibility for RED implementation.

These documents are provided with the recognition that the requirements laid down in the EU Renewable Energy Directive are not intended to disrupt trade in agricultural commodities. Further, the EU foresees negotiating a bilateral agreement with the US regarding compliance with the RED.

As a result, we expect the documents, when accompanying shipments of US soybeans, to be found by EU Member States to support compliance with the EU Renewable Energy Directive.

American Soybean Association  
North American Export Grain Association  
National Oilseed Processors Association  
United Soybean Board  
US Soybean Export Council

December 2011



United States

Department of Agriculture



United States

Trade Representative

Monday, November 14, 2011

To whom it may concern:

The European Union's Renewable Energy Directive (RED) (2009/28/EC) contains sustainability certification requirements for soybeans and other commodities being imported for biofuels production. Based on the framework of U.S. conservation programs described below, and the success of those programs to date, the United States government maintains that additional certification of U.S. biofuels and biofuel feedstock is unnecessary, pending efforts to achieve a bilateral agreement through which the EU recognizes the United States' longstanding framework of conservation programs that achieve the sustainability objectives of the RED. Director-General for Energy Philip Lowe confirmed the Commission's intent to enter into negotiations for a bilateral agreement with the United States in his letter of September 22, 2011.

Soybeans and other commodities grown in the United States are produced in accordance with applicable U.S. laws and regulations, including the following programs:

- Highly Erodible Land Conservation Compliance Provisions
- Wetland Conservation Compliance Provisions
- Grassland Reserve Program
- USDA Forest Service Monitoring
- Bureau of Land Management Protection

Based upon verified compliance with these laws and regulations, U.S. soybeans meet the objectives of the sustainability criteria as contained in Article 17 of the EU's RED, including Article 17(3)-(5).

Sincerely,

A handwritten signature in black ink, appearing to read "Islam A. Siddiqui".

Ambassador Islam A. Siddiqui  
Chief Agricultural Negotiator  
Office of the United States Trade  
Representative

A handwritten signature in black ink, appearing to read "Michael T. Scuse".

Mr. Michael T. Scuse  
Acting Under Secretary  
Farm and Foreign Agricultural Services



United States  
Department of  
Agriculture

Grain Inspection,  
Packers and Stockyards  
Administration

Stop 3620  
1400 Independence Ave., SW  
Washington, DC 20250-3620

*[date/year]*

TO WHOM IT MAY CONCERN:

In reference to Annex *[x]* of *[name of document]*,

“Soybeans and other commodities grown in the United States are produced in accordance with applicable U.S. laws and regulations, including those covering the conservation programs listed below. As such, they may be sold freely without any restrictions in the United States. The commodities used for domestic purposes are the same as those used for export.

- Highly Erodible Land Conservation Compliance Provisions
- Wetland Conservation Compliance Provisions
- Grassland Reserve Program
- USDA Forest Service Monitoring
- Bureau of Land Management Protection”

Sincerely,

/s/

*[designated official]*

Federal Grain Inspection Service



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Director-General

Brussels, **22 SEP. 2011**  
ENER C1/PL/lb D (2011) 1045392a

H.E. Ambassador William E. Kennard  
United States Mission to the EU  
Rue Zinner 13  
B-1000 Brussels

Your Excellency,

Please find attached a letter addressed to Mr Scuse, Acting Under Secretary Farm and Foreign Agricultural Service - United States Department of Agriculture and Ambassador Islam A. Siddiqui, Chief Agricultural Negotiator - United States Trade Representative.

I would be grateful if you could ensure that the letter is forwarded to the addresses.

Yours sincerely,

Philip Lowe



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Director-General

**22 SEP. 2011**

Brussels,  
ENER/C1/ED/Ib D(2011) 1045392

Ambassador Islam A. Siddiqui  
Chief Agricultural Negotiator  
Office of the US Trade  
Representative

Mr. Michael T. Scuse  
Acting Under secretary of FFAS  
US Department of Agriculture

Dear Ambassador Siddiqui,

Dear Mr Scuse,

Thank you for your letter of 20 July following up on our meeting on that same day on the topic of the EU sustainability criteria for biofuels.

As I mentioned in our meeting, it is important that trade in commodities such as soy beans will continue between the US and the EU. The EU's renewable energy/biofuels policy creates additional demand and presents hence an opportunity for other countries to increase exports to the EU.

In that context I think it is good to recall that the EU sustainability criteria for biofuels, as laid down in the EU Renewable Energy Directive<sup>1</sup>, are not intended to disrupt trade in agricultural commodities in any way. Their application is limited to biofuels, and compliance with the criteria is only necessary for the purposes of EU Member States' support schemes for biofuels or to count towards EU targets of biofuel use. Thus, only the part of US soy exports to the EU that are used as a raw material for biofuels that benefit from those support schemes would need to comply with the criteria.

---

<sup>1</sup> Directive 2009/28/EC.

Nevertheless, I agree that it is desirable that the implementation of the sustainability criteria in the EU is done in a way that presents as little administrative burden as possible in relation to trade flows in biofuels and biofuel feedstock, both as regards imports into the EU and internal EU trade. To this end, the Renewable Energy Directive foresees the possibility for the Commission to recognise so-called "voluntary schemes" setting standards for the production of biomass products as demonstrating compliance with the sustainability requirements of the Directive. The Commission has so far recognised<sup>2</sup> seven such schemes, including one particularly concerning biodiesel produced from soybeans. Where an economic operator can deliver evidence (certificate) from such a recognised voluntary scheme, all EU Member States must accept this proof.

In addition, the Renewable Energy Directive foresees the possibility of the EU concluding bilateral or multilateral agreements with third countries, with a view to verifying compliance with the sustainability criteria for biofuels. Any such agreements must contain provisions on sustainability criteria that correspond to those in the Renewable Energy Directive. In your letter of 7 June 2011 to Director General Demarty of DG Trade you made a request to enter into such a bilateral agreement. I am pleased to confirm that the Commission is ready to explore this approach. We will inform you or your staff as soon as possible of any further information, in addition to what you have already supplied, which is required to prepare for the initial exploratory process.

You have also requested an 'interim solution' pending the outcome of the process for a conclusion of a bilateral agreement. In particular you have indicated that this is necessary in relation to the upcoming harvest season as sale contracts are being signed, whereas only a limited number of Member States have transposed the sustainability criteria. We have explored the suggestion you have made in the form of an exchange of letters between the European Commission and the US Administration. However, we have found that, independently of the substance, this approach would exceed the Commission's legal powers in this matter and would therefore not provide any legal certainty for your industry. We have analysed the issue further and found that an interim arrangement in compliance with the Directive is possible under the implementing rules that EU Member States lay down under the Directive.<sup>3</sup>

In November 2010 the Commission informed of a potential system for the implementation of the sustainability criteria, in line with the requirements of the Renewable Energy Directive, for the start-up period of the application of the sustainability criteria<sup>4</sup>. That interim arrangement concerned the harvest of 2010, for which sale contracts were being signed while the detailed rules of the EU Member States' implementation of the sustainability criteria were not yet known. As you have also indicated, it appears that for a significant number of Member States the rules for verifying compliance with the sustainability criteria may not yet be available for the 2011 harvest either. Therefore, by means of a separate letter I am recommending that Member States allow for the system set out in Annex to this letter – which is the same system that was recommended last November – to apply for the harvest of 2011.

---

<sup>2</sup> [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_schemes\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm)

<sup>3</sup> According to Article 18(3) of the Directive.

<sup>4</sup> [http://ec.europa.eu/energy/renewables/biofuels/doc/2010\\_bsc\\_sustainability\\_criteria\\_harvest.pdf](http://ec.europa.eu/energy/renewables/biofuels/doc/2010_bsc_sustainability_criteria_harvest.pdf)

I understand from industry that the recommendations issued last year have been helpful in the practical implementation of the sustainability criteria. In practice the proposed system would mean that evidence for meeting the sustainability criteria does not have to be available at the moment raw materials are sold or used for biofuel production, even though the economic operators concerned should of course be confident that evidence can be obtained later. It further means that auditing can also be done retrospectively and on a sample basis. The interpretation of the traceability mechanism (the 'mass balance system') in this system allows flexibility for a longer period over which it applies, leaving time for US industry and others to put in to place a system for compliance with the criteria.

I trust these arrangements meet your expectations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philip Lowe', with a stylized, cursive script.

Philip Lowe

Cc: Mr Demarty (TRADE)

## Annex – System for implementation of the sustainability criteria

It follows from Article 18(1) and 18(3) of the Renewable Energy Directive that verification of compliance with the EU sustainability criteria for biofuel and bioliquids requires that Member States ask economic operators to do three things: 1) to submit information; 2) to arrange for an adequate standard of independent auditing; and 3) to use a mass balance system. One way these requirements may be implemented by Member States could be:

### 1) Submission of information:

- As indicated in the Communication on voluntary schemes<sup>5</sup> the submission of information can consist of a statement that the biofuels/bioliquids were obtained in a way that complies with the Directive's criteria. There is no general requirement that evidence itself has to be submitted, although it should be made available to Member States on their request.
- There is no requirement to impose a specific format for economic operators to use when submitting information about compliance with sustainability requirements. Member States may choose e.g. only to provide an address for where to submit the information.
- Evidence may be collected retrospectively, e.g. after materials have been sold or used, as long as the evidence can be presented when auditing takes place (see point 2).
- As indicated in the Communication on voluntary schemes evidence of compliance with the land-related criteria could take many forms, including aerial photographs, satellite images, maps, land register entries/databases<sup>6</sup> and site surveys. Evidence of compliance can be 'positive', e.g. if it is shown that land was cropland in January 2008 or a little earlier this may be enough to show compliance with some or all of the land-related criteria.

### 2) Arranging for an adequate standard of independent auditing:

- Member States shall require economic operators to arrange for an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done.
- Auditing can be done retrospectively on a yearly basis, i.e. there is no requirement that an audit takes place before materials are sold or used.
- Auditing can be done on a sample basis, in which case it is for independent verifiers to define the size of the sample that will permit them to reach the level of confidence necessary to issue a verification statement.

---

<sup>5</sup> OJ 2010/C 160/1

<sup>6</sup> E.g. the Integrated Administration and Control System (IACS) for the EU's Common Agricultural Policy.



### 3) Using a mass balance system<sup>7</sup>:

- When economic operators choose to use a mass balance system in which they average the mass balance over a period of time, an appropriate time period needs to be established. It may be appropriate for Member States to allow for additional flexibility in the period over which the balance has to be achieved for crops that have been harvested previous to the implementation of the system. However, the period over which the balance has to be achieved on a site should not exceed one year.
- The evidence of compliance with the mass balance system can be collected retrospectively as long as the evidence of the physical link between all stages can be presented when auditing takes place.

---

<sup>7</sup> Typically, biofuels/bioliquids have a production chain with many links, from field to distribution of the fuel. It is in relation to the final product that compliance with the requirements of the Directive need to be shown. To show this, claims will need to be made about the raw material and/or intermediate products used. The method laid down in the Directive by which a connection is made between information or claims concerning raw materials or intermediate products and claims concerning final products is the mass balance method. This requires a physical link between all stages (as opposed to 'book and claim' systems where after feedstock production the certificate and the raw material are traded separately from each other). However, the mass balance system does allow raw materials with different sustainability characteristics to be mixed (as opposed to physical segregation systems), but on balance no more sustainable material can be taken out of such a mixture than went in.