

## Environment - Switzerland

### Legal framework of the Swiss market for sustainable biofuels

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#### Introduction

Despite the recent liberalization of the market for sustainable biofuels, bioethanol has not yet successfully penetrated the market. Therefore, the Federal Council recently decided to remove certain legal obstacles with respect to bioethanol by amending the applicable statutes and administrative procedures.

As a result of the Kyoto Protocol and the Federal Act on the Reduction of Carbon Dioxide Emissions, the entire sustainable biofuel market (eg, bioethanol, biodiesel and biogas) is of increasing importance to Switzerland. Pursuant to these regulations, by the end of 2010 Switzerland must lower its greenhouse gas emissions by 10% compared to 1990 levels. The adoption of biofuels is considered to be one way to support the achievement of this target and specific regulations in this regard have been introduced on an international and national level governing the market for sustainable biofuels. For example, on May 8 2003 the EU Biofuels Directive was introduced to promote the use of biofuels and other renewable fuels for transport. Switzerland has used this directive as a guideline to enact supporting national provisions on the use of biofuels.

This update outlines the statutes and administrative procedures that apply to all biofuel producers, importers and sellers on the Swiss market.

#### Background

The Constitution obliges the Swiss federation to support sustainable development and, in particular, to support the use of renewable resources (eg, biomass) in generating energy. Since biomass is used not only for energy production, but also to produce sustainable biofuels, the Federal Act on Mineral Oil and the Federal Ordinance on Mineral Oil (both as amended on July 1 2008) set specific requirements for the production, import and storage of biofuels and their raw materials, and established preconditions for obtaining tax relief or exemptions.

Furthermore, the Ordinance on Evidence of a Positive Ecological Balance of Sustainable Biofuels entered into force on April 15 2009. Tax relief or exemption is granted only to suppliers which show evidence prior to their first tax registration that their biofuels meet all the ecological and social minimum standards of the relevant ordinances.

Additionally, the Ordinance on the Prevention of Air Pollution regulates certain requirements with respect to fuels and emissions by industries and traffic. This ordinance contains certain definitions relating to fuel substances. In particular, it sets limits on the amounts of different substances which fuels may contain, and clarifies whether such fuels may be obtained on the market. Any party which commercially imports or sells fuels is required to declare and inform the customs authority and customers respectively of the quality of such fuels.

#### Ecological and social standards

##### *Ecological standards*

The Mineral Oil Ordinance sets the requirements and minimum standards in relation to the ecological impact of sustainable biofuels. In order to obtain tax relief or exemption, the following three preconditions must be fulfilled:

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- Throughout the entire value chain, biogenous fuels must emit 40% less greenhouse gases than fossil fuels. The value chain includes the cultivation of renewable resources, their refinement, production and consumption by end users.
- Sustainable biofuels may not, throughout the entire chain, strain the environment more heavily than fossil fuels.
- The cultivation of renewable resources for the purpose of producing biofuels must not jeopardize rain forests or biological diversity.

In the context of these requirements and depending on the type of resources used, biofuels are divided into three categories. This distinction is made in order to emphasize that not all categories of biofuel meet the minimum ecological standards. Accordingly, administrative rules may impose more procedural duties on suppliers.

Biofuels in the first category are made by refining biogenous wastage or residue that remains in the course of producing agricultural and forestal products. These biofuels are considered to be on a so-called 'positive list' since they usually meet the preconditions listed above. Consequently, suppliers need not present particular evidence with regard to the positive ecological balance of the fuel. The directorate general of Customs and, where necessary, the Federal Office for the Environment determine whether the substances used in the production process qualify as biogenous wastage or residue.

Biofuels in the second category are made from palm oil, soya oil or canola. These biofuels are placed on the so-called 'negative list' for which, in principle, no tax relief or exemption is granted, unless the suppliers present evidence to the Federal Office for the Environment that their fuels meet the ecological minimum standards. The purpose of this list is to emphasize the priority of food production over the refinement of food to biofuels.

Biofuels in the third category consist of refined raw materials other than those which fall into the first or second categories. In this regard, the Federal Office for the Environment decides whether the requirements of the ecological minimum standards are met on a case-by-case basis. In any case, suppliers must submit evidence and request a tax relief or exemption from the directorate general of Customs.

#### **Social standards**

In order to meet the minimum social standards of the Mineral Oil Ordinance, suppliers are required to comply with all social norms and applicable laws of the countries in which renewable resources are cultivated and biofuels are produced. In particular, the rules of the Convention on International Labour Organization stipulate that:

- suppliers must respect freedom of association and participation in the activities of a labour union by their employees or the employees of their business partners;
- suppliers may not force people to work involuntarily at their sites or the sites of their business partners;
- suppliers may not employ children at their sites or the sites of their business partners; and
- suppliers or their business partners may not discriminate between employees.

#### **Administrative proceedings for tax relief or exemption**

Tax relief or exemption is granted only if, before the first tax registration with the directorate general of Customs, the supplier presents evidence that its biofuels meet all the required ecological and social minimum standards stated in the ordinances.

Tax relief or exemption is usually granted for a period of four years. During this time, suppliers are obliged to notify the directorate general of Customs, within a reasonable timeframe, of any changes to the raw materials or production process which may affect compliance with the ecological and social minimum standards.

Administrative proceedings to obtain tax relief or exemption generally take about three months. The Federal Office for the Environment is competent to examine all documents on ecological evidence and the Federal Department of Economic Affairs examines the documents relating to social requirements.

The administrative proceedings with respect to evidence of ecological balance start with the submission of the relevant documents to the directorate general of Customs, which must occur before the first tax registration either by the importer or – in the case of biofuels which are produced in Switzerland – by the producer. In order to deliver such evidence, Swiss producers must provide information regarding the raw materials which are used for producing biofuels. In contrast, importers must also disclose the identity of foreign producers or exporters of biofuels.

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