

UNITED STATES COMMENTS ON THE STATEMENT OF ESSENTIAL FACTS

Review No. ER0083

NON-CONFIDENTIAL

I. INTRODUCTION

1. The United States welcomes the opportunity to provide comments to the Trade Remedies Authority (“TRA”) on its statement of essential facts concerning its expiry review of the anti-subsidy measure on imports of biodiesel originating in the United States. The United States addresses below two aspects of the statement. First, the TRA should reach a negative injury determination because an evaluation of the likelihood of injury from biodiesel imports from the United States indicates that, were the measure at issue to expire following this review, any injury caused to the UK industry by subject imports would not be likely to continue or recur. Second, consistent with the TRA’s determination in the hydrotreated vegetable oil (“HVO”) anti-subsidy investigation, it should find that continuing the measure is not in the UK’s economic interest.

II. LIKELY VOLUME ANALYSIS

2. The United States argued in its comments on the request for an expiry review filed by UK fatty acid methyl ester (“FAME”) biodiesel producers (hereafter “Applicants”) that the volume of subject imports from the United States during the period of review (“POR”) was minimal.¹ The TRA’s analysis of import volume confirms that “imports of the goods subject to review were insignificant in proportion to all imports.”² The limited volume of subject imports shipped to the UK throughout the POR is probative to the TRA’s likely volume analysis.

3. The TRA bases its determination that U.S. FAME biodiesel exporters have the ability to increase shipments to the UK market on the possibility that such exporters may reallocate feedstock intended to produce out-of-scope HVO renewable diesel to produce more in-scope FAME biodiesel.³ That possibility assumes that the price of HVO, which is significantly higher than FAME, will decline to such an extent in the imminent future that U.S. producers with both HVO and FAME production facilities will redirect their raw material feedstock from one facility to the other.

¹ U.S. Subsidy Expiry Review Comments (Apr. 3, 2026), para. 2. The POR is January 2022 through June 2025.

² Statement of Essential Facts (Aug. 6, 2026), para. 667.

³ Statement of Essential Facts, paras. 618-620.

4. This assumption conflicts with the TRA's prior finding in its transitional review of the EU anti-dumping and anti-subsidy measures on HVO and FAME that HVO prices were "approximately 38-45% higher" than the price of FAME, such that "{t}he risk of injury from underselling or undercutting is therefore low in respect of HVO."⁴ An objective analysis of the likely volume of subject imports from the United States based on positive evidence would require the TRA to substantiate its assumption that U.S. exporters would be economically incentivized to produce more lower-valued FAME than higher-valued HVO, notwithstanding their available capacity to produce more FAME merchandise.

5. The TRA bases its determination that U.S. FAME exporters nonetheless have the incentive to increase exports to the UK market on an affirmative transshipment finding by the European Commission in 2011, following its 2009 investigation of imports of biodiesel from the United States.⁵ Specifically, the TRA determined that this 2011 finding evinces "a practice by US exporters to penetrate markets where there are countervailing duties in place via third-country routes."⁶ Although past evidence of circumvention is not irrelevant to TRA's evaluation of the likely volume of subject imports, the finding of another authority more than 15 years ago does not, for this review, demonstrate a "practice" by subject producers.⁷

6. Furthermore, other information on the record of this review indicates that the risk of U.S. biodiesel producers transshipping biodiesel through Canada is low, including the Government of Canada's objections to the TRA's presumption of circumvention,⁸ and TRA's own analysis that exports of U.S. biodiesel to Canada have sharply declined.⁹ An objective analysis of the likely volume of subject imports from the United States based on positive evidence would require the TRA to address these conflicting findings.

⁴ Transitional review of countervailing duties applying to biodiesel originating in the United States of America and consigned from Canada (Nov. 10, 2020), para. 343.

⁵ Statement of Essential Facts, para. 624, (citing EU Regulation 444/2011, *extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore* (May 5, 2011)).

⁶ *Id.*

⁷ *Derived from* the date of the EU's transshipment finding (May 5, 2011) *and* issuance of the TRA's Statement of Essential Facts (August 6, 2026).

⁸ Statement of Essential Facts, paras. 65-66.

⁹ Statement of Essential Facts, para. 628. Indeed, TRA relies on the loss of export opportunities in Canada to find that U.S. producers will have further incentive to redirect their shipments of FAME biodiesel elsewhere, including the UK market, in the imminent future. *Id.*, para. 629.

II. LIKELY IMPACT ANALYSIS

7. The United States observed in its comments on the request for an expiry review that during the POR several of the UK industry's metrics improved, including sales volumes and market shares (which increased), and costs of production and inventories (which declined).¹⁰ The United States also highlighted that the declining trade and financial indicators used by Applicants to show the UK industry's vulnerability to injury appeared instead to be driven by the decline of 52 percent during the POR of the UK industry's export sales.¹¹ Additionally, the TRA determined in its review that, during the POR, nonsubject imports of biodiesel from China depressed domestic prices. The UK industry's declining export performance and the impact of nonsubject imports from China are unrelated to subject imports of biodiesel from the United States which, as stated above, were only marginally present in the UK market during the POR. These developments are probative to the TRA's likely impact analysis and do not support the TRA's affirmative determination.

8. In addition, instead of relying on industry-wide data concerning the UK industry's profitability of the type that Applicants supplied with their request for an expiry review of the orders on U.S. biodiesel, the TRA based its examination of profitability on questionnaire information submitted by a single company, Argent.¹² Trends in Argent's cashflow and return on investment do not adequately support the TRA's finding that there were restrictions to "producers' ability to respond during periods of injury".

III. ECONOMIC INTEREST TEST

9. In its statement of essential facts, the TRA determined that although the measure may increase input costs for downstream users, that is "outweighed by the need to prevent renewed injury to a domestically important industry" noting the context of "increasing competitive pressures from alternative fuels."¹³

10. However, in its recent subsidy investigation of HVO from the United States, the TRA determined that "the negative impacts of a measure are likely to be disproportionate to the benefits associated with removing injury."¹⁴ The TRA relied upon factors such as that weighted average biodiesel prices indicated "higher estimated costs to UK downstream groups" and reduced benefits to UK producers;¹⁵ reduced ability to substitute between FAME and HVO in

¹⁰ U.S. Subsidy Expiry Review Comments, para. 6.

¹¹ *Id.*

¹² Statement of Essential Facts, paras. 28, 31-32, 710-712. Olleco declined to complete a questionnaire response and Greenergy withdrew from the expiry review before filing a full questionnaire response.

¹³ Statement of Essential Facts, paras. 764-765.

¹⁴ Investigation No. AS0067, note to the public file (9 June 2026), p. 14 (revising the findings from the November 2025 statement of essential facts to reflect additional evidence and analysis).

¹⁵ Investigation No. AS0067, note to the public file (9 June 2026), p. 13.

light of price divergence and higher demand for biofuels;¹⁶ and the risk of market and competition outcomes that harm downstream groups.¹⁷

11. Given similarities with respect to the FAME and HVO markets, affected industries, and consumers, the TRA should determine that continuing the biodiesel measure is also not in the economic interests of the UK. Otherwise, the TRA should explain the basis for its departure from findings in the HVO subsidy investigation that appear to be relevant to its evaluation in this review.

IV. CONCLUSION

12. The United States thanks the TRA for the opportunity to comment on the statement of essential facts. We appreciate the TRA's careful consideration of these issues, and urge the TRA to reach a negative likelihood of injury determinations in this review or to determine that continuing the measure does not meet the economic interest test.

¹⁶ Investigation No. AS0067, note to the public file (9 June 2026), pp. 12-13.

¹⁷ Investigation No. AS0067, note to the public file (9 June 2026), pp. 13-14.