

ER0083 – Anti-subsidy expiry review of biodiesel products originating from the United States of America (including biodiesel consigned from Canada)

Comments on the Statement of Essential Facts in ER0083

28 August 2026

1. Introduction

- 1.1 Valero Energy Ltd (“**VEL**”) respectfully submits comments in response to the Statement of Essential Facts (“**SEF**”) in review ER0083 – biodiesel products originating from the United States of America (including biodiesel consigned from Canada) (“**ER0083**”) of the Trade Remedies Authority (“**TRA**”) dated 6 August 2026.¹
- 1.2 VEL substantiates below the reasons which should lead the TRA to consider that: (i) no subsidisation of biodiesel through the BTC is likely recur; and (ii) 45Z PTC cannot replace the BTC as the primary countervailable subsidy through an expiry review. Consequently, the TRA should terminate the ER0083 or, in the alternative, recommend that the level of the countervailing duties be appropriately decreased to correspond to the materially lower level of benefits available.

2. The BTC expired on 31 December 2024 and no subsidisation through the BTC can occur after that date

- 2.1 In the SEF, the TRA considers that the subsidisation of FAME through the BTC is likely to recur because of:
- (a) A pattern of past extensions and reinstatements of the BTC
 - (b) Proposed legislation to reinstate the BTC
 - (c) Letter from NATSO (trade association representing truck stop owners), SIGMA (trade association representing fuel marketers and chain retailers), and the National Association of Convenience Stores (NACS) to the U.S. Senate
 - (d) Alleged economic pressure for domestic fuel prices due to the conflict in the Middle East.²

We address each of these points separately below and explain why they do not – individually or collectively – support a determination that subsidisation through the BTC is likely to recur.

Past extensions or retroactive reinstatements to the BTC

- 2.2 The TRA determines that “*the U.S. has demonstrated an established pattern to routinely extend and retroactively reinstate*” the BTC.³ The TRA recalls nine acts adopted by the U.S. Congress that enacted and extended the BTC between 2005 and 31 December

¹ TRA, ‘Statement of Essential Facts in ER0083’ (“SEF”) (6 August 2026), available [here](#).

² SEF, para. 162.

³ SEF, para. 144.

2024.⁴ The TRA relies on this observation to support its conclusion that subsidisation through the BTC is likely to recur.⁵

- 2.3 VEL disagrees that past extensions and reinstatements of the BTC evidence that it is "likely" that the BTC will be reinstated. Without a consideration of the conditions that gave rise to each of the previous reinstatement measures and their comparison with the present circumstances, previous extensions merely demonstrate that reinstatement has been possible in the past, while not establishing any likelihood for future BTC subsidisation.
- 2.4 Crucially, all past reinstatements of the BTC were adopted against the backdrop that once the BTC expired, low-carbon fuel production no longer received federal support. After the BTC's expiry on 31 December 2024, an alternative scheme supporting energy production – the so-called Clean Fuel Production Credit ("**45Z PTC**") – came into force. Therefore, the primary reason for the past reinstatements of the BTC is no longer present.
- 2.5 In addition, the introduction of the 45Z PTC significantly and permanently altered the legislative landscape governing federal support for low-carbon fuel production in the U.S. The legislative and policy focus in the U.S. has now decisively shifted to the 45Z PTC, which is operational as of 1 January 2025 and is set to remain in place at least until 2029.
- 2.6 The prevailing view within both the U.S. Administration and U.S. Congress is that their legislative responsibilities regarding energy tax credits have been fulfilled with the enactment of the 45Z PTC. In particular, after the BTC expired, U.S. Congress had a major legislative opportunity to reconsider the federal fuel-credit framework when preparing the so-called One Big Beautiful Bill Act ("**OBBA**"). Nevertheless, it explicitly chose to further develop and extend the 45Z PTC, rather than reinstate the expired BTC.
- 2.7 Conversely, any assertions that the U.S. Administration or U.S. Congress are actively considering, or are likely to consider in the future, to reinstate the BTC are a mere speculation.

Proposed legislation to reinstate the BTC

- 2.8 The TRA identifies three bills introduced to the 119th (current) U.S. Congress to extend, temporarily reinstate or fully reinstate the BTC:⁶
 - (a) H.R. 3137, seeking to retroactively reinstate and extend the BTC until 31 December 2026.⁷
 - (b) S. 3297, seeking to reinstate the BTC between 30 November 2025 and 31 May 2026.⁸
 - (c) H. R. 8497, seeking to reinstate the BTC until 31 December 2029.⁹
- 2.9 In addition to the three bills identified by the TRA in the SEF, two bills to extend the BTC were also introduced in both chambers (H.R. 9060 and S. 5582) in the previous session of the U.S. Congress (2023-2024).¹⁰ These bills are now moot, as they were not acted upon

⁴ SEF, Table F.2.1.1.2., p. 33.

⁵ SEF, para. 162.

⁶ SEF, paras. 138-141.

⁷ H.R.3137 - Biodiesel Tax Credit Extension Act of 2025 (1 May 2025), available [here](#).

⁸ S.3297 - CROP Act (2 December 2025), available [here](#).

⁹ H.R.8497 - Supporting Energy and Economic Development (SEED) Act (27 April 2026), available [here](#).

¹⁰ H.R.9060 - Biodiesel Tax Credit Extension Act of 2024 (18 July 2024), available [here](#); S.5582 - Biodiesel Tax Credit Extension Act of 2024 (16 December 2024), available [here](#).

before the end of the session. S. 4408 was also introduced as a U.S. Senate as a companion bill to H.R. 8497.¹¹ Further, the TRA notes that it does not consider S. 3297 as the proposed expiration date of the legislation has already passed.¹²

- 2.10 The TRA considers "the proposed legislation as positive evidence of unambiguous political intentions to reinstate subsidisation in the form of the BTC that forms part of a long-established pattern of legislative measures reinstating the BTC and continuing subsidisation. ... Even if this specific legislative bill does not come into effect, the continuing proposals for the reinstatement of BTC are positive evidence that this subsidy programme is likely to recur."¹³
- 2.11 VEL strongly disagrees with this determination and considers that, in fact, the available evidence points exactly to an opposite conclusion.
- 2.12 Each bill referenced above was an isolated effort to reintroduce the BTC that – in every single instance, for more than two years now – has failed to gain any traction in U.S. Congress or U.S. Senate and progress at all beyond their mere introduction.
- 2.13 There is no meaningful political intention to reinstate the BTC as demonstrated by the six failed attempts brought by a small, recurring group of sponsors to introduce legislation referenced by the TRA, which did not make any progress in the U.S. Congress and/or U.S. Senate.
- 2.14 The lack of any interest to reintroduce the BTC becomes even more stark when the inertia surrounding the BTC-related bills is compared to robust legislative and administrative activity relating to the 45Z PTC. Indeed, since the BTC's expiry the focus of the U.S. Congress fully shifted to the 45Z PTC, which underwent extensive revisions during the drafting of the recent comprehensive tax legislation (OBBBA). In addition, the IRS and the Treasury Department continue to actively develop guidance to further operationalise the application of the 45Z PTC.¹⁴
- 2.15 The TRA's determination that the continuing proposals for the reinstatement of BTC are positive evidence that this subsidy programme is likely to recur is erroneous. We point to the current record of the attempts to reinstate the BTC – with zero bills formally further considered in any way following their initial introduction. **The TRA's assessment of the likelihood to recur cannot be an unlimited and unsupported prediction about whether the BTC might ever return.** The mere introduction of a bill is not remotely equal to its enactment, much less a guarantee that it will be adopted. Where each of the previous attempts fails and shows no remote chance of success, a determination that on the basis of these attempts the BTC is likely to recur is unfounded.
- 2.16 VEL also notes that none of the acts reinstating the BTC in the past was exclusively aimed at extending the BTC. They all were much broader in scope and covered a wide array of industries and budget considerations. Conversely, each of the bills considered by the TRA covers only the BTC.

¹¹ S.4408 - Supporting Energy and Economic Development (SEED) Act (28 April 2026), available [here](#).

¹² SEF, para. 140.

¹³ SEF, paras. 145-146.

¹⁴ See e.g. U.S. Internal Revenue Service (IRS) and Treasury Department, 'Notice of Proposed Rulemaking for the 45Z PTC' (3 February 2026), available [here](#).

- 2.17 Consequently, considering the legislative and policy landscapes described above, the TRA should reverse its findings and conclude that the unsuccessful attempts to reinstate the BTC do not support a determination that the BTC is likely to recur.

The letter to the U.S. Senate from NATSO, SIGMA, and the National Association of Convenience Stores (NACS)

- 2.18 The TRA determines that "*US trade associations repeated demands for BTC's reinstatement*" affect the likelihood of BTC subsidisation. To support this statement, the TRA relies on the letter from NATSO (trade association representing truck stop owners), SIGMA (trade association representing fuel marketers and chain retailers), and the National Association of Convenience Stores (NACS) to the U.S. Senate.¹⁵
- 2.19 VEL strongly objects to the importance that the TRA has given to the stakeholders' letter to the U.S. Senate. With the 45Z PTC now fully operational and set to remain in place until at least 2029, the principal beneficiaries – notably the agriculture sector – are strongly supporting the new scheme. This support makes any reinstatement of the BTC extremely unlikely.
- 2.20 As a preliminary matter, a letter urging the U.S. Senate to act is not evidence that it is likely to deliver that outcome. As explained above, any efforts to reinstate the BTC to date have failed to gain any traction with the U.S. Senate or U.S. Congress. As such, if anything, the lack of reaction to that letter rather evidences that it is *unlikely* that the BTC will be reinstated.
- 2.21 By contrast, a number of trade associations of ethanol producers, biodiesel and renewable diesel producers, agricultural and other biofuel stakeholders have advocated to support and develop the 45Z PTC, and not to reinstate the BTC. Examples include:
- (a) The Renewable Fuels Association has repeatedly supported implementation and improvement of the 45Z PTC. For example, in February 2026, it described the proposed 45Z PTC regulations as "*a step in the right direction*"¹⁶
 - (b) Growth Energy, a biofuel trade association, has consistently advocated for a strong and properly implemented 45Z PTC. For example, in February 2026, it welcomed progress on 45Z PTC, stating that a strong implementation could create opportunities for farmers and producers and unlock substantial investment.¹⁷
 - (c) On 15 May 2024, 25 trade associations¹⁸ representing producers, feedstock providers, blenders, consumers, and retailers of low-carbon, renewable fuels sent a letter to Treasury Secretary in which they explained that they "*are eager to utilize*

¹⁵ SEF, paras. 148-149.

¹⁶ Renewable Fuels Association (RFA), '*RFA Welcomes Proposed 45Z Tax Credit Regulation*' (3 February 2026), available [here](#).

¹⁷ Growth Energy, '*Growth Energy Welcomes 45Z Progress*' (3 February 2026), available [here](#).

¹⁸ Including: Advanced Biofuels Business Council, Airlines for America, Alternative Fuels & Chemicals Coalition, American Biogas Council, American Short Line and Regional Railroads Association, American Soybean Association, Associated Equipment Distributors, Association of American Railroads, Association of Equipment Manufacturers, Cargo Airline Association, Clean Fuels, Coalition for Renewable Natural Gas, General Aviation Manufacturers Association, Growth Energy, Methanol Institute, National Air Transportation Association, National Business Aviation Association, National Corn Growers Association, National Oilseed Processors Association, North American Renderers Association, Renewable Fuel Association, SAF Coalition, U.S. Canola Association, Vertical Aviation International, and Waste Gas Capture Initiative.

this new tax incentive and participate in the further decarbonization of the highway transportation, maritime, rail, aviation, and home heating sectors".¹⁹

- 2.22 Contrasted with this ongoing dialogue between a large number of key trade associations representing a broad range of agricultural, producer and biofuel organisations actively supporting the implementation and improvement of the 45Z PTC and not calling for the reinstatement of the BTC, the TRA's consideration that it is likely that the BTC will be reinstated on the basis of a single letter from NATSO/SIGMA/NACS is wrong.

Alleged economic pressure for domestic fuel prices due to the conflict in the Middle East.

- 2.23 The TRA recalls that domestic fuel prices in the U.S. have risen significantly in 2026 due to the conflict in the Middle East, and states that *"as there is uncertainty surrounding the end of the conflict between the US and Iran, the US government will be considering multiple options available to it to reduce retail fuel prices."* It then goes on to conclude that, considering that *"lowering the price of biodiesel through subsidisation can lead to reducing inflationary price pressures of domestic retail prices of diesel in the US"*, the BTC will likely be reinstated.

- 2.24 Absent any evidence confirming the accuracy of any part of the above hypothetical scenario, this determination is purely speculative. Higher fuel prices in the U.S. do not provide any evidence that the particular response adopted by the U.S. Government or Congress is likely to be the reinstatement of the BTC. The TRA has not showed any evidence of concerns regarding domestic fuel prices and the specific legislative outcome of reinstating the expired BTC. Any such price pressure could equally result in no legislative action at all, reliance on existing policy instruments, or the adoption or amendment of other measures.

3. All payments relate to FAME blended prior to 31 December 2024, regardless of the payment's date

- 3.1 We further flag that the TRA's determination that it might have been technically possible to claim or receive the BTC throughout 2025 for blending occurring in 2024 does not support in any way that subsidisation through the BTC could occur after 31 December 2024. As acknowledged by the TRA, the BTC expired on 31 December 2024 and does not provide any benefits to any fuels blended after 31 December 2024.²⁰ The BTC offered no benefits for eligible products blended during or after the period of investigations, i.e., between 1 January 2025 and 31 December 2025 ("**POI**"), even if some benefits for 2024 blending were received after 31 December 2024.

- 3.2 Consequently, the TRA should revise its determination because subsidisation through the BTC cannot occur after 31 December 2024, even if benefits that arose prior to that date could theoretically have been paid out in the course of 2025.

4. 45Z PTC cannot replace the BTC in the present expiry review

- 4.1 U.S. exporters and producers of FAME did not receive any countervailable benefits under the BTC – the principal subsidy countervailed by TS0005 – during the POI or thereafter.

¹⁹ Letter to Secretary Yellen (U.S. Department of the Treasury), 'Implementation of the Section 45Z Tax Credit' (15 May 2024), available [here](#).

²⁰ SEF, para. 136.

Thus, there is no likelihood that the expiry of the measures would lead to the continuation or recurrence of subsidisation.

- 4.2 Unlike an administrative (interim) review, an expiry review is not the instrument for examining and countervailing new subsidy schemes, particularly where they do not constitute a continuation of the scheme analysed in the original investigation, as is the case in the present review.
- 4.3 Article 21.2 of the WTO Agreement on Subsidies and Countervailable Measures ("**SCM Agreement**") governs administrative reviews, mandating that authorities review the need for "*the continued imposition of the duty*" and, in particular, examine "*whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both*". Article 21.2 of the SCM Agreement is implemented in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**2019 Regulations**") under regulation 69. By contrast, Article 21.3 of the SCM Agreement provides for a 'sunset' clause according to which "*any definitive countervailing duty shall be terminated*", unless the authorities determine that "*the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury*". The UK has implemented Article 21.3 of the SCM Agreement under regulation 70 of the 2019 Regulations.
- 4.4 As explained by the WTO Appellate Body in *US – Carbon Steel (India)*, while Article 21.2 of the SCM Agreement focuses on "*the likely future consequences of the maintenance, changing, or removal of the duty*", the expiry review under Article 21.3 focuses only on "*the future consequences of the removal of the duty*".²¹
- 4.5 Therefore, *changes* to the countervailing measures must be executed through interim reviews. Replacing the principal countervailable subsidy with a materially different scheme, would breach WTO law and open the door for a dangerous precedent allowing for a disguised interim review without the related rights, safeguards, or due process of such review.
- 4.6 The TRA has recognised the differences between the 45Z PTC and the BTC. Most importantly, in the SEF, the TRA calculates that, during the POI the BTC offered on average only 58% of the benefits available under the BTC.²² In addition, the 45Z PTC is characterised by a number of new mechanisms and limitations which significantly change not only the amount of benefit but also the way in which the 45Z PTC operates as compared to the BTC. These include:
 - (a) Calculation of the credit value based on life-cycle emissions of eligible feedstock. According to the TRA's calculations, the benefits from the 45Z PTC credit during the POI were on average equal to \$0.58 per gallon. The TRA submits that this might, on average, increase to \$0.78 per gallon by 2029,²³ although the values will depend on the rates that are not yet available and the emissions rates will be published annually pursuant to Section 45Z(b)(1)(B)(i). Importantly, as it is physically impossible for feedstock to have zero emissions, the maximum credit amount (if all other relevant conditions are met) will always be materially below the BTC's \$1 per gallon.

²¹ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.530.

²² SEF, Table F.3.1.1.1., p. 60.

²³ Ibid.

- (b) Prevailing wage and apprenticeship requirements, which must be met to increase the value of credits above \$0.20 per gallon. Facilities placed in service before 1 January 2025 are subject to prevailing wage and apprenticeship requirements for all their alterations or repairs. These requirements introduce a significant compliance cost for producers not present under the BTC.
 - (c) From 1 January 2026, eligible fuels must be made from feedstock grown or produced exclusively in the U.S., Mexico or Canada. This significantly limits the available feedstock, in particular affecting the feedstocks eligible for double counting under the UK's Renewable Transport Fuel Obligation ("**RTFO**") scheme.²⁴
- 4.7 The TRA's omissions of these material differences in its alleged "close nexus" assessment is unacceptable. The "selected" factors reviewed by the TRA are dangerously overinclusive and do not constitute meaningful nexus factors (e.g. that they were provided by the same WTO Member, the U.S.; took the form of credits redeemed against tax liability; or were provided by the IRS).
- 4.8 Furthermore, the TRA fails to acknowledge and assess the key differences between the BTC and the 45Z PTC, such as eligibility of only a part of FAME under the 45Z PTC or differences in the scope of the beneficiaries.²⁵ It also incorrectly infers functional similarity from temporal succession and legislative replacement of an old programme by a new programme.
- 4.9 The differences between the BTC and the 45Z PTC are material and do not allow the TRA to replace the former with the latter as the primary countervailing subsidy in a way that would respect the TRA's expiry review powers under the 2019 Regulations and Article 21.3 of the SCM Agreement.
- 4.10 Consequently, the TRA should terminate the expiry review ER0083, as the countervailable subsidies under the reviewed measures are no longer available following the expiry of the BTC before 1 January 2025, i.e., prior to the start of the POI, and the 45Z PTC is too dissimilar from the BTC to be deemed as replacing it as the primary countervailable scheme.
- 4.11 Should the TRA, despite the arguments above, decide not to terminate the ER0083, the TRA needs to review the level of countervailing duties and recalculate them pursuant to regulation 70(2)(b) of the 2019 Regulations to reflect the considerably lower benefits available under the 45Z PTC as compared to the BTC (a 42% drop for the POI, according to the TRA's own calculations).

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²⁴ See e.g. Department for Transport, '*RTFO and SAF Mandate list of feedstocks including wastes and residues*', available [here](#).

²⁵ See e.g. TRA, '*Note of 9 June 2026 in case AS0067*' (9 June 2026), p. 9, available [here](#), where the TRA identified a company that was eligible for the BTC but not for the 45Z PTC.