OPEN VERSION

AS0067 Anti-Subsidy Investigation - HVO (Biodiesel) from the United States

Comments to TRA Note to Public File of 12 March 2026

Submitted by the Renewable Transport Fuel Association ("RTFA")

CONFIDENTIAL VERSION

09 April 2026

I. Introduction

1. The present Comments have been prepared in connection with the AS0067 anti-subsidy investigation initiated by the United Kingdom Trade Remedies Authority ("TRA") on imports of hydrotreated vegetable oil diesel ("HVO") originating in the United States.

2. During the period of investigation ("POI", calendar year 2024), the TRA found that US HVO exporters benefited from the Biodiesel Mixture Credit, commonly known as the Blenders Tax Credit ("BTC"), which constituted a countervailable subsidy. The BTC expired on 31 December 2024 and was replaced, from 1 January 2025, by the Section 45Z Clean Fuel Production Credit of the US Internal Revenue Code ("CFPC").

3. On 12 March 2026, the TRA published a notice under Regulation 40 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("Regulations") [1] proposing to make a final negative determination, i.e., to terminate the case without imposing countervailing measures, on the ground that the BTC no longer provides "present subsidisation", as required under Paragraph 11(2)(a) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 ("the Act"). The proposed termination is solely based on the expiry of the BTC; it makes no reference at all to the CFPC, which the TRA itself had previously found to be a "replacement subsidy programme" for the BTC.

4. In the present submission, the UK biodiesel industry ("RTFA") will:

   - Set out the factual background of the investigation and recall TRA's findings in the Statement of Essential Facts ("SEF"); (**II**)

   - Demonstrate that the requirement of "present subsidisation" under UK and WTO law is satisfied where the investigated subsidy has been replaced by another subsidy programme bearing a sufficiently close nexus with it. The CFPC is precisely such a replacement subsidy for the BTC, as the TRA itself found in the SEF. On that basis, countervailing duties should be imposed using the verified BTC data, with any adjustments to reflect the CFPC to be addressed in a subsequent administrative review; (**III**)

   - Demonstrate that even if the TRA were to require evidence of actual CFPC benefits, the available data demonstrates that subsidisation is taking place well above the *de minimis* thresholds (**IV**). [2]

II. Background

a) Investigation of the TRA

5. This anti-subsidy investigation concerns US imports of HVO, which are subsidized under a variety of US programmes. The two key US programmes are:

   - the Blenders Tax Credit ("BTC"), and

   - the Clean Fuel Production Credit ("CFPC").

---

[1] UK Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, SI 2019/450.

[2] For the purposes of this submission, the three cooperating US exporters are: Diamond Green Diesel LLC ("DGD"), a 50/50 joint venture between Valero Energy Corporation ("Valero") and Darling Ingredients Inc. ("Darling"), whose UK affiliate is Valero Energy Ltd ("VEL"); Phillips 66 Company ("P66"); and St. Bernard Renewables LLC ("SBR"), a 50/50 joint venture between PBF Energy Inc. ("PBF") and Eni Sustainable Mobility US Inc.

6. The period of investigation ("POI") in this case is calendar year 2024.

b) Statement of Essential Facts

7. On 28 November 2025, the TRA published its Statement of Essential Facts ("SEF"). The TRA concluded that:

- US imports of HVO entering the UK during 2024 (the POI) benefited from a countervailable subsidy under the BTC;[3]
- the BTC was discontinued on 1 January 2025 by means of the 2022 Inflation Reduction Act;[4]
- the same 2022 Inflation Reduction Act introduced the CFPC, which entered into force on 1 January 2025;[5]
- although the two programmes are not identical, **the CFPC is**, in the words of the TRA, **"a replacement subsidy programme" for the BTC**.[6]
- as the CFPC entered into force after the POI, the TRA "*was unable to obtain any verifiable data*" regarding the CFPC. However, since "*the TRA considers the CFPC to be a replacement programme for the BTC*", **there is "a continuing subsidy beyond the POI"** and "*it is appropriate to use the verified data of the BTC to calculate the subsidy margins*".[7]

c) Proposed Termination Notice

8. On 12 March 2026, the TRA published a Notice reversing course ("Termination Notice"). The TRA first confirmed what it already found in the SEF, i.e. that the BTC was discontinued on 1 January 2025 ("*the BTC no longer offers present subsidisation to US HVO exporters*"). [8]

9. Remarkably, however, the TRA on that basis alone, and **<u>without any reference at all to the CFPC replacement subsidy</u>**, concluded that there is **no "*present subsidisation*"** and that it would make a final negative determination.

10. No explanation was offered for this complete disregard of the CFPC, why the CFPC can suddenly no longer be seen as "a replacement subsidy" and/or "*a continuing subsidy beyond the POI*" which meets the "present subsidisation" requirement.

III. The requirement of "present subsidisation"

11. Paragraph 11(2)(a) of Schedule 4 to the Act implies that there be "present subsidisation" at the time of making a final determination. It refers to

"*the goods have been or are being imported into the United Kingdom and* ***<u>are subsidised</u>***".

12. This requirement is reflected also in Article 19 of the WTO Agreement on Subsidies and Countervailing Measures ("SCM"):

---

[3] Statement of Essential Facts, AS0067, 28 November 2025 ("SEF"), para. 621.
[4] Ibid., paras. 160 and 317.
[5] Ibid., paras. 211 and 317.
[6] Ibid., paras. 215, 317 and 318.
[7] Id.
[8] Notice under Regulation 40, AS0067, 12 March 2026.

> "*1. If … a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article* ***unless the subsidy or subsidies are withdrawn****.*
>
> *[…]*
>
> *4. No countervailing duty shall be levied on any imported product* ***in excess of the amount of the subsidy found to exist****, calculated in terms of subsidization per unit of the subsidized and exported product".*

13. In line with SCM Article 19.1, in cases where the subsidy ended or was fully withdrawn and had not been replaced by another subsidy at the time of the final determination, WTO panels and the Appellate Body have, indeed, found that no countervailing duties can be imposed.[9] The same conclusion was reached, pursuant to SCM Article 19.4, in situations of a one-off non-recurring subsidy where benefits had been found to have fully expired before the determination (such as restructuring aid allocated over a period of five years that ended before the determination).

a) **"*Present subsidisation*" continues when the investigated subsidy has changed or was replaced by another subsidy**.

14. Crucially, however, the situation of a fully withdrawn or non-recurring subsidy must be distinguished from one where the subsidy merely changed or where the subsidy programme investigated was terminated but replaced by another, similar subsidy.

15. The WTO Appellate Body was very clear that changes in subsidisation subsequent to the POI do not require an investigation authority to update its finding of subsidisation at the time of imposition of the duty:

16. In the case *Japan – DRAMS (Korea)*, the subsidies at issue were financial contributions provided to Hynix Semiconductor as part of restructuring programmes during its financial difficulties. Because these were one-time grants rather than recurring subsidies, the Japanese investigating authority allocated the benefit over the period 2001–2005. By the time the final determination was issued in 2006, the allocation period had expired and, based on the authority's own methodology, no subsidy benefit remained. Hence, no countervailing duties could be imposed. The Appellate Body nonetheless confirmed that changes in subsidisation subsequent to the POI do not require an investigating authority to update its finding of subsidisation at the time of imposition of the duty:

> *"209. In our view, Japan misreads the Panel Report when it alleges that the Panel interpreted Article 19.4 to require that an investigating authority update its finding of subsidization and show that there is subsidization at the time of imposition of the countervailing duty. On the contrary, the Panel explicitly said that* ***it was 'not suggesting that an investigating authority [was] somehow required to conduct a new investigation at the time of imposition, in order to confirm the continued existence of the subsidization found to exist during the period of investigation****. That will defeat the very purpose of using periods of investigation in the first place.'*
>
> *210. By its terms, Article 19.4 refers to a subsidy "found to exist".* ***We see no requirement in Article 19.4 for an investigating authority to conduct a new investigation or to "update" the determination at the time of imposition of a countervailing duty in order to confirm the continued existence of the subsidy.***[10] (emphasis added)

---

[9] See Appellate Body Report on *Japan – DRAMS (Korea)*, WT/DS336/AB/R, 28 November 2007.

[10] Appellate Body Report on *Japan – DRAMS (Korea)*, WT/DS336/AB/R, 28 November 2007.

17. In the case of *Japan – DRAMS (Korea)*, the subsidy was completely gone. This situation is very different from one where a replacement subsidy was enacted, as in the present investigation.

18. Similar to SCM Article 19.1 (no duties "*unless the ... subsidies are withdrawn*"), SCM Article 4.7 on prohibited subsidies refers to "*withdrawal of a subsidy*". Here as well, the Appellate Body has found that when a WTO Member simply changes, partly withdraws or replaces one subsidy with another, it cannot be found to have "withdrawn" the subsidy:

    *"**full withdrawal** of a prohibited subsidy within the meaning of Article 4.7 ... **cannot be achieved by a [measure] that replaces the original subsidy with yet another subsidy** found to be prohibited ... [to find otherwise would] lead to a potentially 'never-ending cycle' of dispute settlement proceedings and inordinate delays in the implementation of recommendations and rulings of the DSB".*[11]

b) Subsidisation continues as the CFPC is a replacement subsidy for the BTC.

19. In the present case, the Office of the United States Trade Representative ("USTR") itself agreed that the subsidy investigated (BTC) was replaced by another, similar subsidy (CFPC) the day after the POI.[12] USTR's Questionnaire Response to the TRA provides that " ***a replacement tax credit (the clean fuel production tax credit) has been enacted****, it went into effect for fuel produced after December 31, 2024*".[13]

20. The TRA confirmed this view in its SEF.[14] The 12 March 2026 Note of the TRA did not alter this position.

21. This view is confirmed by official US statements in the context of the enactment of the CFPC (also referred to as Section 45Z). The US Internal Revenue Service ("IRS") 2025-10 Notice explicitly mentions that:

    *"at the time § 45Z was enacted, the Code contained an assortment of income tax credit, e**xcise tax credit, and excise tax payment provisions for various biofuels** and other alternative fuels sold or used as a fuel. **These include incentives for biodiesel**, renewable diesel, and several different alternative fuels (including compressed natural gas and second generation biofuel). Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 117th Congress, JCS 1-23, at 278 (Dec. 31, 2023). **Congress designed the § 45Z credit to replace these incentives,** which were only available for liquid or gaseous fuels".*[15] (emphasis added)

22. In the preamble to the Section 45Z proposed regulations published in the Federal Register (91 Fed. Reg. 5161), the US Department of Treasury ("Treasury") and IRS stated that "*the section **45Z credit replaces an assortment of prior fuel incentives**", consisting of "income tax credit, excise tax credit, and excise tax payment provisions for various biofuels and other alternative fuels sold for use as a fuel or used as a fuel, including biodiesel, renewable diesel, compressed natural gas, second generation biofuel, and SAF*".[16]

---

[11] Appellate Body Report on *US – FSC, Second 21.5*, WT/DS108/AB/RW2, 13 February 2006, paras. 83 and 86.
[12] USTR, Questionnaire response, 26 June 2025.
[13] Ibid., p. 149
[14] SEF, paras. 215, 317 and 318.
[15] Exhibit 1 – Internal Revenue Service, Notice 2025-10, *Section 45Z Clean Fuel Production Credit; Request for Public Comments*, 2025-6 I.R.B. 658 (released 10 January 2025). See further: Exhibit 2 – Department of the Treasury, Internal Revenue Service, *Section 45Z Clean Fuel Production Credit*, 91 Fed. Reg. 5160 (4 February 2026), REG-121244-23, p. 604.
[16] Exhibit 2 – Department of the Treasury, Internal Revenue Service.

23. The legislative history of the CFPC also confirms this conclusion. The Joint Committee on Taxation ("JCT") Blue Book, the authoritative congressional explanation of the IRA, describes the prior fuel tax incentives, including the BTC as the "Present Law" that the CFPC was enacted to succeed.[17] This is echoed by the Congressional Research Service, which states that the CFPC "*in effect, consolidates and **replaces** several fuel-related credits that expired at the end of 2024, including credits for biodiesel, biodiesel mixtures, agri-biodiesel, renewable diesel, second-generation biofuel, mid-level ethanol blends, sustainable aviation fuel, alternative fuels, and alternative fuels mixtures*".[18]

24. There may be differences between the two, and one may lead to a higher or lower benefit than the other. But that there continues to be a subsidy is undisputed. In such cases, having to conduct a new investigation would "*defeat the very purpose of using periods of investigation in the first place*".[19]

25. Deciding otherwise would create a major loophole. Simply changing a subsidy programme during or after the POI or replacing one programme with another, would mean that the subsidy is "withdrawn" and no duties can be imposed. It would be an open invitation for "hit and run" subsidies and render the anti-subsidy instrument completely ineffective, to the detriment of the UK biodiesel manufacturing industry and indeed all UK manufacturing, as it would allow a damaging precedent to be set.

26. The TRA's core mandate requires effective, timely defence of UK industry against unfair trade practices. Proposing termination in respect of a replacement subsidy, which the TRA itself confirmed constitutes a continuation of the BTC, is procedurally inefficient and, in practical effect, rewards the subsidising government and its exporters for simply renaming the subsidy programme. Meanwhile, the UK biofuels industry faces immediate market disruption from subsidy-distorted US pricing. Delaying action by requiring a new investigation into the CFPC guarantees continued irreparable harm, undermining UK sustainable fuel production, employment, and green infrastructure investment. An immediate affirmative determination based on verified BTC data is necessary to restore a level playing field and give effect to the anti-subsidy instrument.

27. Forcing the UK industry, in such cases, to re-file a complaint from scratch would also be a totally inefficient use of claimant and TRA resources and go against basic principles of procedural efficiency. At the same time, this precedent would create perverse incentives globally, as periodically replacing or renaming subsidy programmes would suffice to shield them from countervailing measures. The systemic implications extend beyond this investigation. WTO Members that routinely restructure subsidy programmes, for instance through successive iterations of industrial policy plans (e.g. Five-Year Plans), would effectively obtain a clean slate every time the underlying scheme changes its name or some of its detailed conditions.

c) There is a "close nexus" between the BTC and the CFPC

28. Present or continued subsidisation can, of course, not be based on just any new subsidy; an equity infusion by the state of California in a tech company can hardly be seen as a continuation of a US federal tax credit for HVO. A sufficient nexus must exist between the

[17] Exhibit 3 – Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress,* JCS 1-23(Dec. 31, 2023), p. 278 discussing 26 USC §§ 40A, 6426 and 6427 (as extended by Section 13201 of the IRA).
[18] Exhibit 4 – Congressional Research Service, *The Section 45Z Clean Fuel Production Credit*, IF12502 (updated 18 February 2025).
[19] See Appellate Body Report on *Japan – DRAMS (Korea)*, WT/DS336/AB/R, 28 November 2007, para. 209 (quoting the panel).

investigated subsidy that ended (here, the BTC) and the new programme that replaced it (here, the CFPC).

29. This was confirmed by the Appellate Body in *US – Hot-Rolled Carbon Steel from India*. The way that **subsidisation** must continue between the POI and the date of final determination (no duties if the "*subsidies are withdrawn*", SCM Article 19.1) also in an administrative review duties can be maintained "*only as long as and to the extent necessary to counteract* ***subsidization*** *which is causing injury*".[20]

30. As in the present situation, this raises the question of whether a subsidy, which entered into force after the POI, can be the basis for continued subsidisation (in an administrative review).

31. The Appellate Body started its analysis pointing out that:

> *"the use of the word "**subsidization**" in Article 21, as distinct from the word "subsidy" in Article 11.1, allows for a **broader scope of review** than the precise subsidy or subsidies that were examined in the original investigation".*[21]

32. The same is true for Paragraph 11(2)(a) of Schedule 4 to the Act which forms the basis of the requirement of "present subsidisation". This paragraph refers to "*goods have been or are being imported into the United Kingdom and* ***are subsidised***". The terms "are subsidized", as distinct from the word "subsidy", captures more than the precise subsidy that was examined in the investigation.

33. On that basis, the Appellate Body then introduced the "close nexus" test:

> *"Article 21 requires an investigating authority to establish that there is* ***a sufficiently close nexus*** *between the subsidies that are the subject of the original investigation and the new subsidy allegations that the investigating authority proposes to examine as part of its administrative review".*[22]

34. The Appellate Body pointed out that "[t]here are several factors that could potentially be taken into consideration on a case-by-case basis in determining whether subsidy allegations that were not at issue in the original investigation … may properly be examined in administrative reviews". It noted that in the instant dispute:

> *"the Panel took into account the fact that the specific new subsidy allegations involved the* ***same product at issue*** *in the original investigation ... the United States and the European Union suggested that, in their view, for new subsidy allegations to be considered in an administrative review, they should share the following elements with the original subsidies subject of the countervailing duty:* ***(i) the same Member; (ii) the same responding companies (beneficiaries of the subsidies); and (iii) the same products****. In addition, the European Union referred to* ***other potential considerations*** *such as the* ***nature of a subsidy****, whether the same or a different* ***granting authority*** *or the same or a different* ***subsidy programme*** *is involved, or* ***whether a subsidy has been replaced by another subsidy****".*[23]

35. In the present investigation, all of the above considerations point at a very close nexus between the BTC and the CFPC:

---

[20] Article 21.1, SCM Agreement. The requirement for injury analysis, present in Article 21.1, is not present in Article 19.1.

[21] Appellate Body report on *US – Hot-Rolled Carbon Steel from India*, WT/DS436/AB/R, 8 December 2014, 4.539.

[22] Ibid., para. 4.543.

[23] Ibid., footnote 1256.

- The BTC and the CFPC apply to the same product, namely: renewable fuels, in this case, HVO.

- Both are federal tax credits (revenue foregone), that is, the same type of subsidy.

- Both have the same granting authority, namely the IRS.

- The act that repealed the BTC is the same act that put in place the CFPC, namely: the 2022 Inflation Reduction Act. The CFPC undoubtedly "replaced" the BTC): Section 13201 of the IRA extended the BTC (§§ 40A, 6426, 6427) through 31 December 2024, while Section 13704 of the same act created the CFPC (§ 45Z), applying to transportation fuel produced after that date.[24] The Treasury and the IRS confirmed in the proposed § 45Z regulations that "*the section 45Z credit replaces an assortment of prior fuel incentives*", including those for "*biodiesel, renewable diesel, compressed natural gas, second generation biofuel, and SAF*".[25]

- The CFPC entered into force the day after the BTC expired.

- Legislative history clearly confirms that the CFPC constitutes the replacement of the BTC;[26] As Treasury and IRS stated in the proposed § 45Z regulations, citing the JCT Blue Book, "*Congress designed the section 45Z credit to replace these incentives*", referring to the BTC.[27]

- Both provide up to 1$ credit per gallon: the BTC, to the blender of biodiesel producing a qualified mixture; the CFPC to the producer of clean fuel meeting certain conditions.

- Both programmes operate through the same § 4101 taxpayer registration mechanism. Under the BTC, every person producing or importing biodiesel was required to register with the Secretary of the Treasury under § 4101,[28] and under the CFPC, § 45Z(f)(1)(A)(i)(I) imposes the identical § 4101 registration requirement on taxpayers claiming the credit.[29]

- Same beneficiaries: all three US exporters investigated and found to have benefited from the (expired) BTC confirmed that they have registered for the (replacement) CFPC and are qualified and receiving CFPC tax credits.[30] Darling disclosed total production tax credit sales of 285 million USD for Financial Year 2025, representing its 50% share of credits generated by the DGD joint venture.[31] This is confirmed by the fact that Darling's CFO identified the CFPC sales as the source of a significant portion of the 368 million

---

[24] Both provisions appear in **Title I, Subtitle D** (Energy Security) of the same act — Public Law 117–169, 136 Stat. 1818 (16 August 2022).

[25] Exhibit 2 – Department of the Treasury, Internal Revenue Service, 26 CFR Parts 1 and 48.

[26] Exhibit 3 – Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 117th Congress,* JCS 1-23(Dec. 31, 2023) ,p. 278.

[27] Exhibit 2 – Department of the Treasury, Internal Revenue Service, *Section 45Z Clean Fuel Production Credit*, 91 Fed. Reg. 5161.

[28] 26 USC § 4101; 26 USC § 40A(d)(1).

[29] 26 USC § 45Z(f)(1)(A)(i)(I).

[30] SEF, para. 214.

[31] Exhibit 5 – Darling Ingredients Inc., Q4 2025 Earnings Call, 12 February 2026 (remarks of Brad Day, CFO), as reported in Ticker Report; Exhibit 6 – Darling Ingredients Inc. Fourth Quarter and Fiscal Year 2025.

USD in dividends Darling received from DGD during the year.[32] Similarly, SBR's own submissions confirm that it received CFPC credits in 2025.[33]

- Both appear in the same manner in the recipients' income statement as a discrete line reducing the total cost of sales. During the POI, the BTC appeared as a discrete line item in DGD's consolidated income statement, reducing total cost of sales.[34] The same line item continues in Financial Year 2025 for the CFPC, recording a benefit of 598,7 million USD, confirming the **functional continuity** between the two programmes at the entity accounting level.[35]

36. DGD and VEL invoke the EU Commission's termination of its anti-subsidy proceeding on bioethanol imports from the United States in 2012 as authority for the proposition that, where a subsidy expires post-IP, the investigation must be terminated.[36] That case is fundamentally distinguishable. The Commission terminated because the VEETC had expired, had not been reintroduced, and there were "*no signs of reinstatement*"; moreover, the only candidate replacement credit concerned a different product and technology altogether. [37] What DGD and VEL also omitted to explain is that the European Commission has imposed, since 2009, solid anti-subsidy duties on the product concerned originating in the USA, as the subsidy granted to the US HVO industry has never been discontinued since then (even if it systematically expired, it was always reintroduced retroactively).

37. In the present investigation, the situation has nothing to do with the expiration of the VEETC in the EU bioethanol investigation. In the present case, the CFPC was enacted before the BTC expired (as part of the same Act), it entered into force the day after the BTC ended, it has since been extended through 2029, and it covers the same product produced by the same companies at the same facilities. If anything, the bioethanol precedent supports the position of the UK biodiesel industry. The European Commission terminated because there was genuinely nothing left to countervail. Here, there manifestly is: a programme worth **billions of dollars** that keeps the investigated companies operational, even profitable, and capable to export massive volumes of HVO to the UK, unfairly killing the UK biodiesel industry and its corresponding jobs.

d) "Present subsidisation" suffices and there is no need for the replacement subsidy to be at the same level as the investigated subsidy

38. Once "present subsidisation" is confirmed, as the TRA did in the SEF - "*the TRA considers the CFPC to be a replacement programme for the BTC meaning that there is a continuing subsidy beyond the POI*"[38] - the fact that there may be differences between the two or that one may offer more subsidies in a given period than the other is, at this stage in the investigation, irrelevant.

---

[32] Exhibit 5 – Darling Ingredients Inc., Q4 2025 Earnings Call, 12 February 2026 (remarks of Brad Day, CFO), as reported in Ticker Report.

[33] SBR Meeting with TRA, 8 January 2026, Non-Confidential Version, slide 13; SBR Reply to SEF, 2 January 2026, Non-Confidential Version, para. 14.22.

[34] E.g. Exhibit 7 – DGD FY2024 Consolidated Financial Statements,

[35] Exhibit 8 – DGD FY2025 Consolidated Financial Statements, Statements of Income.

[36] Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012 (2012/825/EU), OJ L 352, 21.12.2012, p. 70, Recitals 182–193. Cited in DGD/VEL Comments on the SEF in AS0067 (Hogan Lovells, 29 December 2025), Section 2.4.

[37] Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012 (2012/825/EU), OJ L 352, 21.12.2012, p. 70, Recitals 185, 189.

[38] SEF, para. 318.

39. The requirement is to find continued subsidisation, not to re-investigate the new subsidy or to confirm that this new subsidy offers the same level of support as the old one. As the Panel in *Japan – DRAMS (Korea)* found, if that were the requirement and a new investigation would need to be conducted, this would "*defeat the very purpose of using periods of investigation in the first place*".[39]

40. The TRA has not sought detailed information on or in any way investigated the implementation of the CFPC (as of 2025), as the CFPC was not yet in place during the POI. Any such investigation of the actual subsidies provided to specific exporters under the CFPC would be for a future administrative review.

41. At this stage, all that the TRA needs to find is that the CFPC, **<u>based on its statutory language</u>**, continues the subsidisation. It found as much in the SEF and it did not find otherwise in the March 12 Note.

42. To find "present subsidisation", the TRA is under no obligation to calculate the exact subsidies currently provided under the CFPC, let alone the precise amounts that individual US HVO exporting producers qualify for or have actually claimed or received for tax year 2025 or beyond. A finding that the statutory language of the CFPC continues the subsidisation suffices.

43. As the Appellate Body found in *US – Aircraft 21.5*:

> *"revenue 'foregone' [the type of 'subsidization' at issue in that case and the present investigation] ... refers to a **government relinquishing an entitlement to raise revenue**. This means that the analysis of whether there is a financial contribution in the form of revenue 'foregone' requires a determination of whether a government has relinquished an entitlement to raise revenue ... **rather than the use of tax concessions by the eligible taxpayers**".*
>
> *"In principle, **evidence relied on in such an analysis will <u>be located in a Member's taxation rules</u>**".*[40]

44. In other words, to find present "subsidisation" in this investigation, all that is needed is an examination of the US taxation rules (under the CFPC) and whether these rules, on the face of it, relinquish a US government entitlement to raise revenue. This is unquestionably the case. At this stage, there is no need to examine the precise amounts that investigated exporters have actually claimed or received.

e) Countervailing duties must be imposed based on the verified data of the BTC and a detailed assessment of the CFPC financial benefit must await an administrative review

45. In the present circumstances, as the TRA concluded in the SEF, "*it is appropriate to use the verified data of the BTC to calculate the subsidy margins*" and the TRA should make a final positive determination based on this verified BTC data. As in any other anti-subsidy case where subsidisation may change after the POI, any possible changes resulting from the replacement CFPC must then be looked at in a future administrative review.

46. By proposing to terminate this investigation, on the sole basis that the BTC has expired, the TRA in its Note of 12 March effectively forces the UK industry to re-start the procedure from scratch, file a new complaint based on the CFPC and prove all over that US HVO imports are subsidized.

---

[39] Panel on *Japan – DRAMS (Korea)*, WT/DS336/R, 13 July 2007, para. 7.356.
[40] Appellate Body Report, *US – Aircraft 21.5*, WT/DS353/AB/RW, 28 March 2019, para. 5.153

47. This puts the anti-subsidy instrument on its head. Where the US government changes one subsidy (fully investigated) with another (entering into force after the POI) **it is for US exporting producers to ask for an administrative review if they consider that the subsidy level has decreased due to the slight changes made to the subsidy. The same is also true for the UK biodiesel industry if it considers that the changes made to the subsidy have led to higher subsidisation of the US HVO exporting producers.**

48. The RTFA insists that, based on all applicable rules, **it is not, nor should it be, for the UK industry to re-file the case from scratch**, wait for another year or more (without protection) and demonstrate that the replacement subsidy offers the same level of subsidisation as the original one. If that is nonetheless the outcome of this investigation, RTFA members will suffer irreparable harm, including possible plant closures, for which redress will be sought in the appropriate fora.

IV. In any event, and although not in the scope of the investigation period, all available data post 2024 shows that the CFPC continues to provide very significant subsidies to the US HVO industry

49. Even if "present subsidisation" were to require, already at this stage in the procedure, a detailed examination of CFPC benefits eligibility and/or CFPC benefits actually claimed or received in 2025 (which, as shown above, is not the case), the available evidence demonstrates that the CFPC continues to provide very significant subsidies to US HVO exporting producers and that this level of subsidization is set to seriously increase over time.

50. Paragraph 9(1)(c)(ii) of Schedule 4 to the Act sets out the initiation thresholds.[41] At that stage, two cumulative conditions must be met. The first concerns the **volume** of imports of the product concerned: this volume (whether actual or potential), and the injury, must be "*more than negligible*". According to Regulation 5(3) of the Regulations, the volume of subsidised imports is "negligible" where "*the exporting country or territory that is not a developing country or territory accounts for less than 3 per cent. of imports of the like goods imported into the United Kingdom*" (Regulation 5(3)).

51. The second concerns the **amount** of the subsidy in relation to those goods, which must be "*more than minimal*". Regulation 5(2) of the Regulations clarifies that a subsidy amount is "minimal" in case of "*an amount of subsidy of less than 1 per cent. ad valorem*".

52. Even though (i) these *de minimis* thresholds need not be revisited for a replacement subsidy (like the CFPC) at the present stage of the investigation, and (ii) the TRA does not in any way refer to these *de minimis* thresholds to justify termination (as noted earlier, the TRA Note of 12 March only speaks of the BTC and does not even mention the CFPC), the cooperating exporters argued during the investigation that any subsidisation under the replacement CFPC falls below *de minimis* levels.[42] Contrary to their argumentation, both thresholds are met in the present case.

a) Post-POI, imports of goods originating in the US into the UK continue to be largely above *de minimis*

53. According to Regulation 5(3) of the Regulations, the volume of imports from a targeted country is considered "negligible" where "*the exporting country or territory that is not a developing country or territory accounts for less than 3 per cent. of imports of the like goods imported into the United Kingdom*" (Regulation 5(3)).

[41] Similar to Article 11.9 SCM Agreement.
[42] SBR Reply to SEF, 2 January 2026, paras. 14.20–14.24; P66 Response to AS0067, 2 January 2026, Section 1.

54. Several US exporting producers alleged that, during the investigation, the volumes of subsidized imports from the USA falls below *de minimis* levels.[43]

55. Regulation 5(3) of the Regulations requires the TRA to determine whether US imports of the like goods account for less than 3% of total imports of the like goods into the UK. This is a country-level test. The question is whether the **exporting country** accounts for at least 3% of total imports of the like goods, not whether the actual goods imported were individually subsidised.

56. This reading follows from the statutory language itself. Regulation 5(3) refers to the "*exporting country or territory*" accounting for a given share of "*imports of the like goods imported into the United Kingdom*". It does not refer to the volume of "*subsidised imports*" from that country. Rather, it assesses the total volume of all "*like goods*" from the different sources. The negligible volume test operates as an aggregate filter based on total trade flows from the country under investigation, not a granular assessment of subsidy eligibility, and simply aims at ensuring that there is a presumption of causality between any unfair imports and injury from a volume perspective.

57. Any different reading would lead to an absurd result. It would require the investigating authority to classify each shipment according to whether it individually benefited from a specific subsidy, e.g. whether a specific input used in producing a given batch was provided on favourable terms by a state-owned enterprise, or whether a producer applied a particular tax credit to this particular good. This would effectively require splitting imports from the same exporting producer into "subsidised batches" and "unsubsidised batches", a distinction that has no basis in the Act or the Regulations, nor in the SCM Agreement.

58. Investigating authorities distinguish between cooperating exporters that have or have not used a specific subsidy (and at which rate) for the purposes of calculating individual subsidy margins; they do not subdivide a single exporter's shipments into subsidised and unsubsidised categories for the volume threshold.

59. Moreover, such a reading would entirely disregard the economic reality of cross-subsidisation. A company that receives a tax credit on part of its production benefits across its entire operation, including on the units that did not directly generate the credit. The scale of the US producers concerned illustrates the point. DGD, the largest HVO producer in North America, has a combined renewable diesel production capacity of approximately 4,5 billion litres per year across two plants in Louisiana and Texas, and sells its products "*primarily in the United States, Canada, and Europe*" in 2024.[44] In context, this is nearly 6 times the total UK consumption of HVO in 2024, which amounted to 787 million litres.[45]

60. With production and sales of this magnitude, even if only a portion of DGD's output to the UK qualifies for the CFPC -- for instance because some HVO is produced from non-CFPC eligible feedstock, or single-counted UK Renewable Transport Fuel Certificates ("RTFCs") or because use of certain US feedstock may not (yet) comply with ISCCC certification requirements -- the credits are of such magnitude that they enable the company to lower the aggregate cost structure across the board. DGD's own financial statements confirm the mechanism: both the BTC and its successor the CFPC are booked as a direct deduction from

---

[43] SBR Reply to SEF, 2 January 2026, paras. 14.20–14.24; P66 Response to AS0067, 2 January 2026, Section 1.
[44] Exhibit 7 – DGD FY2024 Consolidated Financial Statements, Note 1 (Business Description).
[45] SEF, table 3.

cost of sales, reducing the reported cost of producing and selling every gallon of fuel regardless of its final destination.[46]

61. Since these companies produce HVO at large-scale US facilities and sell to both domestic and export markets from the same production base, the credit does not need to be directly attributable to a specific exported gallon in order to confer a competitive advantage on exports; it lowers the producer's average cost of production as a whole, thereby enabling it to offer lower prices across all markets, including the UK. For the company's board and investors, what matters is whether the aggregate margin across all markets is commercially viable; individual shipments to specific destinations do not need to be independently profitable so long as the blended cost position, subsidised and unsubsidised output together, supports the overall pricing policy.

62. For instance, Darling's CFO reported to investors that Darling contributed approximately 328 million USD to DGD in 2025, offset by 368 million USD in dividends received, and that a significant portion of those dividends, some 285 million USD, was funded by DGD's sales of CFPC credits.[47] Given that DGD recorded a net loss for fiscal year 2025 and negative EBITDA per gallon in Q3 2025, it is apparent that the CFPC credit sales were instrumental in enabling DGD to distribute positive cash flow to its parent companies. Absent this subsidy-derived inflow, it is doubtful whether DGD could have sustained its current pricing strategy, particularly on export markets with significant price undercutting such as on the UK market.

63. During its investigation, the TRA indicated in the SEF that US imports compared to total imports of the product concerned into the UK amounted to **30-38% in the POI**.[48] The RTFA continues to believe that US HVO have been imported in substantial quantities in the UK post-POI, showing the very strong interest for US exporters to export HVO to the UK market without any trade remedy duties. While the RTFA does not have import data available at the HMRC 10-digit commodity codes, US sources allow to confirm that US HVO producers exported significant quantities to the UK post-POI, and likely well above the 3% threshold required by the UK law. The US Energy Information Administration provides US export volumes of renewable diesel (HVO) by export destination. As shown in the table below, UK is the fourth export destinations of US HVO, with 107 million litres recorded as exports to the UK in 2025:

US exports of renewable diesel - 2025	Million Litres
Canada	1.183
EU	836
Norway	125
UK	107
Others	3
Total	2.255

Source: US-IEA – Exhibit 9

64. Since the RTFA does not have the total volume of imports of HVO into the UK in 2025, it should find a way to assess if this volume of US HVO exports in 2025 was still above the 3% threshold. Provisional Renewable Transport Fuel Obligation ("RTFO") data shows a total UK consumption of HVO at 408 million litres, [49] covering the period up to 27 October 2025.

[46] Exhibit 7 – DGD FY2024 Consolidated Financial Statements , Statements of Income (line item: "Blender's tax credit", deducted within Total costs of sales); Exhibit 8 - DGD FY2025 Consolidated Financial Statements , Statements of Income (line item: "Low carbon tax credits"); Note 2 (accounting policy for Clean Fuel Production Credit).
[47] Exhibit 5 – Darling Ingredients Inc., Q4 2025 Earnings Call, 12 February 2026 (remarks of Brad Day, CFO), as reported in Ticker Report.
[48] SEF, para. 346, table 11.1
[49] Exhibit 10 – Provisional 2025 RTFO Data.

Annualising this figure over 300 days to a full calendar year yields approximately **496 million litres**.[50]

65. As mentioned above, US exports of HVO to the UK in 2025 totalled 107 million litres.[51] This represents approximately **22% of total consumption in 2025**. Given the absence of significant domestic HVO production in the UK, total consumption is effectively equivalent to total imports, meaning that **US-origin HVO accounts for over one fifth of all UK HVO imports,** well above the 3% *de minimis* threshold.

66. SBR's argument that only 1,6% of US HVO exports to the UK were produced from CFPC-eligible feedstock,[52] is misconceived and based on an erroneous reading of the Regulations and the WTO provisions they are based on. That figure measures the alleged share of CFPC-eligible volume *within* US exports themselves. The statutory test, however, measures total imports *from* the US as a share of total UK imports of the like goods. The feedstock eligibility of individual shipments is irrelevant to the volume threshold.

b) Post-POI subsidisation under the CFPC is already largely above *de minimis*

67. Regulation 5(2) of the Regulations indicates that a subsidy amount is "minimal" in case of "*an amount of subsidy of less than 1 per cent. ad valorem*".

68. Here, the relevant question is how the **amount** of the CFPC subsidy is to be calculated and allocated. Critically, just as the "like goods" in the import **volume** *de minimis* threshold discussed above, the product to which the subsidy benefit is allocated must be defined consistently.

69. The underlying logic of the exporters' submissions is that the standard subsidy allocation methodology, dividing total CFPC credits by total export sales value, would yield a negligible rate if applied only to UK-bound HVO produced from eligible feedstocks.

70. As a threshold matter, however, it must be recalled that the **domestic feedstock restriction under the CFPC only entered into force on 1 January 2026, for fuel produced after 31 December 2025**.[53] During the entirety of 2025, the first year the CFPC was in effect, the statute as originally enacted by the IRA did not contain a feedstock origin restriction; the restriction under § 45Z(f)(1)(A)(iii) was added solely by the OBBBA, signed 4 July 2025, with prospective application from 1 January 2026.[54] DGD/VEL and SBR conceded that the feedstock eligibility restrictions are only applicable since 2026.[55] The exporters further conceded that the "*Treasury Department and IRS do not have the authority to make substantive amendments to the underlying law, including with respect to amounts, eligible feedstocks, or labour requirements*";[56] hence, any potential limitation introduced by the Executive is not directly relevant to the TRA's analysis.

71. With reference to the post-POI 2025 data, the exporters' argument regarding feedstock ineligibility simply does not arise since HVO production in all of 2025 was statutorily eligible

---

[50] The provisional RTFO dataset covers the period from 1 January to 27 October 2025, i.e., 300 days. The annualised figure is calculated as follows: (408 ÷ 300) × 365 = 496,4 million litres.
[51] Exhibit 9 – Exports of US HVO 2025 (US EIA).
[52] SBR Reply to SEF, para. 14.20.
[53] OBBBA, Pub. L. 119–21, § 70521(a)(1), adding 26 USC § 45Z(f)(1)(A)(iii); § 70521(a)(2) (effective for transportation fuel produced after 31 December 2025).
[54] As originally enacted by the IRA, § 45Z contained no feedstock origin restriction. The restriction was added solely by the OBBBA, signed 4 July 2025, with prospective application from 1 January 2026.
[55] DGD/VEL Comments on the SEF, 29 December 2025, Section 2.6(b); SBR Reply to SEF, 1 January 2026, paras. 14.18–14.20.
[56] DGD and VEL's Additional Comments dated 24 February 2026, Section 1.1.

for the CFPC regardless of feedstock origin, and any subsidy margin calculation should reflect this.

72. Even with respect to the period from 2026 onwards, when the domestic feedstock restriction does apply, the exporters' argument rests on the flawed assumption that the TRA should trace the subsidy to individual gallons based on feedstock origin (or ISCC certification requirements) rather than allocating the total benefit across the company's production as a whole. As explained below, this batch-specific approach is **inconsistent** with the allocation rules of the Regulations. Moreover, the reality is that producers cross-subsidise their activities (tax credits are thereby spread across production and pricing of all like products). This undermines the premise that non-eligible gallons somehow remain unaffected by the subsidy.

73. The scale of these credits in practice is already evident. Darling disclosed total production tax credit sales of 285 million USD for Financial Year 2025, representing its 50% share of credits generated by the DGD joint venture.[57] Darling's CFO reassured investors on the value of the company's investment in DGD by identifying the production credit sales (i.e. the CFPC credits) as a significant portion of the 368 million USD in dividends Darling received from DGD during the year, underscoring the centrality of these credits to the joint venture's financial performance.[58]

74. These numbers, though, are projected to massively increase in light of the OBBBA, since it not merely extends the CFPC to 2029; it actively expands the scope and value of credits available to producers.

75. First, the OBBBA removes the Indirect Land Use Change ("ILUC") penalty from the lifecycle greenhouse gas emissions calculation under § 45Z from 2026 onwards. This is significant because the ILUC factor previously inflated the carbon intensity scores of crop-based feedstocks such as soybean oil and canola, reducing the per-gallon credit value for HVO produced from these inputs. Its removal lowers their carbon intensity scores by an estimated 20–25 g CO_2e/MJ, thereby increasing the per-gallon credit available for crop-based HVO production.[59] The National Oilseed Processors Association ("NOPA") and the American Soybean Association ("ASA") confirmed on 3 February 2026 that the ILUC removal "*will effectively double the value of the 45Z tax credit for soy-based biofuels and provide eligibility for other feedstocks like canola*".[60]

76. Second, the OBBBA reinstated the small agri-biodiesel producer credit under § 40A(b)(4) at 0,20 USD per gallon, double the previous rate, and made it transferable under § 6418, allowing it to be stacked with the § 45Z credit.[61]

77. Third, the US Environmental Protection Agency ("EPA") has finalised a rule under which foreign fuels and feedstocks will receive half the Renewable Fuel Standard ("RFS") compliance value compared to US-made products, further reinforcing the economic advantage

[57] Exhibit 6 – Darling Ingredients Inc. Fourth Quarter and Fiscal Year 2025.
[58] Exhibit 5 – Darling Ingredients Inc., Q4 2025 Earnings Call, 12 February 2026 (remarks of Brad Day, CFO), as reported in Ticker Report.
[59] Exhibit 11 – Clean Air Task Force, Analysis of ILUC Removal under OBBBA (2025).
[60] Exhibit 12 – National Oilseed Processors Association ("NOPA") and American Soybean Association ("ASA"), Joint Press Release, 3 February 2026.
[61] OBBBA, Pub. L. 119-21, § 70521(j).

of domestically-sourced biofuel inputs.[62] Industry sources report that the proposal effectively doubles "*the credit for UCO collected on U.S. soil, pushing refiners to secure local grease*".[63]

78. Taken together, these reforms substantially expand both the eligibility base and the per-unit credit value of the CFPC, ensuring that the programme's financial impact will substantially grow rather than diminish over time.

79. It is for this reason that the JCT changed its projections on CFPC spending. Originally, the JCT projected that taxpayers will claim 8,4 billion USD in CFPC tax credits over the first three years the CFPC is in effect, equivalent to approximately 2,8 billion USD of annual spending;[64] a level the JCT itself regards as "*similar to previous estimates of the costs of the expiring credits*".[65] Following the OBBBA extension of the CFPC through 2029, the total projected cost increased to 33,1 billion USD.[66] Notably, the introduction of the domestic feedstock eligibility requirement from 2026 onwards does not appear to diminish the programme's impact. **The JCT's December 2025 Estimates project annual CFPC expenditure rising from 2,1 billion USD to 10,6 billion USD over the forecast window**.[67]

80. This increase in spending reflects the renewed commitment of the US administration to support US biofuel production. The US Government is bound to retain and even increase its state support and funding for biofuels. In the words of US Secretary of Agriculture Brooke L. Rollings, issued in June 2025:

> "*There is no greater advocate for our nation's corn, sorghum, and soybean growers than President Trump. We are seeing increased biofuel demand both at home and abroad like never before. American corn, sorghum, and soybean growers fuel America and the world, and we will continue to ensure they are able to do that, but at an even faster rate under the Trump Administration.*
> *[…]*
> ***The Trump Administration has proven it is the most pro-biofuels administration in our nation's history, sending a clear market signal there is a growing need for American grown commodities for fuel use****. With support for nationwide year-round E-15, the highest Renewable Volume Obligation (RVO) proposal in our nation's history, and* ***extending the 45Z biofuel tax credit through 2029 in the One Big Beautiful Bill, the Trump Administration is unleashing new domestic and international markets for our farmers and ranchers like never before. We are just getting started***".[68]

81. Market evidence confirms that US producers are already restructuring their supply chains to maximise CFPC eligibility under the new domestic feedstock requirements. Imports of foreign feedstocks are gradually being replaced by domestic feedstocks.[69] At the same time, there is a significant increase in ISCC certification of North American feedstocks, as well as high adoption rate especially in UCO; signalling a growing interest to export to the UK and EU

---

[62] Exhibit 13 – EPA, RFS Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes, published 1 April 2026, 40 CFR 63, 80 1090.
[63] Exhibit 14 – Grease Connections Blog, dated 18 June 2025, Used Cooking Oil Biodiesel Policy 2025: Waste Grease Becomes Energy Gold
[64] Exhibit 15 – Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2024-2028*, JCX-48-24, Table 1 (11 December 2024).
[65] Exhibit 4 – Congressional Research Service, *The Section 45Z Clean Fuel Production Credit*, IF12502 (updated 18 February 2025)
[66] Exhibit 16 – Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2025-2029*, JCX-45-25, Table 1 (3 December 2025).
[67] Id.
[68] Exhibit 17 – US Secretary of Agriculture, Press Release, 13 June 2025.
[69] Exhibit 18 – US Energy Information Administration, Today in Energy, dated 4 September 2025; Exhibit 19 – Stillwater Associates, September 2025, Analysis of Feedstock Policy on U.S. Renewable Fuels Production.

markets. The RTFA estimates an adoption rate of ISCC certification of at least 58%. The graph below, prepared by the ISCC shows a massive increase in ISCC certification in the US in the recent years:

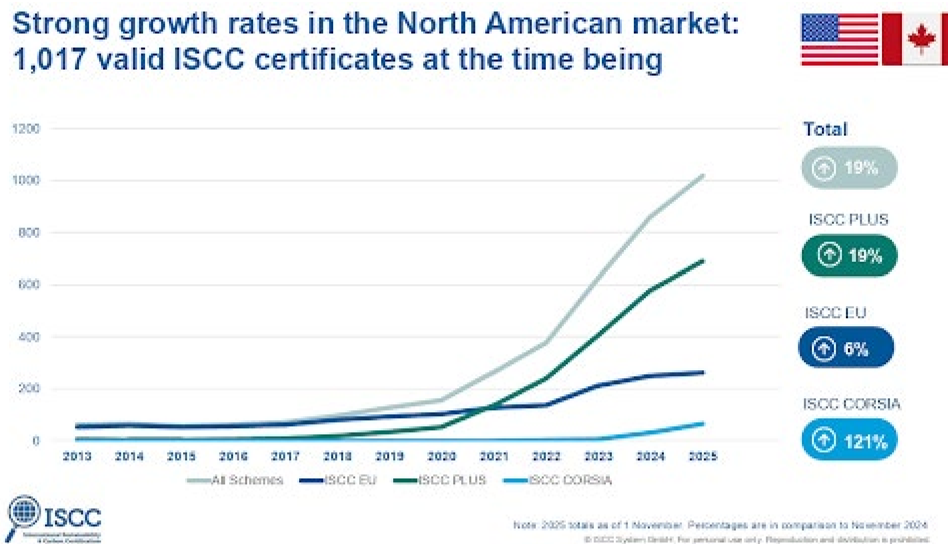

Exhibit 20 – ISCC, ISCC Updates and Recent Developments in the NA Market, presentation at the ISCC Regional Stakeholder Meeting, 18 November 2025, slide 3

82. These are not marginal adjustments; they represent a structural reorientation of the US HVO industry's feedstock base towards CFPC-eligible domestic inputs that would satisfy the regulatory requirements in the UK and the EU. The cooperating exporters' submissions rest on a fundamental methodological error. They extrapolate from market data and incentive structures that prevailed during the POI, i.e. when the BTC treated all feedstock origins equally and no incentive existed for US producers to source domestic inputs for UK-destined HVO, to forecast the future application of the CFPC. The regulatory and commercial landscape, however, has not remained static.

83. As shown above, the US market for renewable diesel feedstocks has undergone a gradual but structural transformation since the enactment of the CFPC and, in particular, the OBBBA. These regulatory changes have also been accompanied by a structural shift in the commercial orientation of US producers, who clearly plan with a view to maximising their CFPC benefits. For instance, in its 2025 Annual Report on Form 10-K, Archer Daniel Midland Company admits that "*the total benefits available under 45Z will be higher in future periods primarily due to changes enacted in the OBBBA*".[70]

84. In sum, it is evident that producers will adjust their feedstock sourcing strategies to accommodate the new regulatory requirements, substituting imported feedstocks with eligible US, Canadian or Mexican inputs, rather than forgo the credits. In other words, the domestic feedstock restriction is expected to alter the composition of inputs, not the availability of the subsidy. Producers that have the scale and supply chain flexibility to make this adjustment, as the major US exporters in this investigation demonstrably do, will continue to claim substantial credits while maintaining their export capacity, including to the UK.

85. At the same time, the full effect of the CFPC cannot be assessed as the credit market for 2025 is still developing. Industry information clarifies that "*roughly $1 billion in §45Z tax credits transacted in 2025, but market participants have been eagerly awaiting additional guidance. Industry estimates for total §45Z eligible fuel supply implies $2-$3 billion in annual tax credit*

[70] Exhibit 21 – ADM, 2025 Annual Report on Form 10-K, p. 30.

generation, suggesting that significant volume remains unsold in the market".[71] The disclosed CFPC benefits of the cooperating exporters therefore represent only a fraction of the credits generated during the first year of the programme's operation, and cannot be taken as representative of the subsidy's true magnitude.

86. Notwithstanding the incomplete state of the 2025 credit market, the financial disclosures already on the public record confirm that the CFPC is providing subsidisation of very substantial magnitude at the individual exporter level. DGD's own audited FY2025 financial statements confirm the scale of the benefit at the company level. DGD reported a "low carbon tax credits" benefit of 598,7 million USD, net of market price adjustments and selling costs.[72] This single company thus accounted for approximately one quarter of the total estimated CFPC expenditure in Financial Year 2025. Were this proportion to hold against the JCT's forward projection of 10,6 billion USD, DGD alone would receive credits in the order of nearly 3 billion USD, a **figure that could not conceivably be considered *de minimis* under any methodology**. It would be unrealistic to suggest that subsidies of this magnitude, flowing directly into the cost of sales of the world's largest renewable diesel producers, have no bearing on their pricing and output decisions in respect of specific export markets, including the UK.

87. The dramatic escalation of projected CFPC expenditure, from 2,1 billion USD in 2025 to 10,6 billion USD by 2029, demonstrates a massive and growing financial intervention that maintains the operational and export viability of US producers despite their well-documented financial struggles. Absent these credits, major exporters such as DGD would face significant operating losses, yet the subsidy enables them to sustain production volumes and undercut UK prices, to the direct detriment of UK sustainable fuel production, employment, and green infrastructure investment.

(i) The subsidy is calculated for the "subsidized and exported product"

88. Article 19.4 SCM provides that countervailing duties may not be levied "*in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the **subsidized and exported product***".

89. The reference to "*the subsidized and exported product*" means the product as defined in the investigation, i.e. the product concerned, not a sub-category of that product filtered by feedstock eligibility.

90. This follows from the Appellate Body's reasoning in *US – Washing Machines*.[73] In that case, Samsung received Korean tax credits for R&D across multiple product lines (washing machines, semiconductors, phones). The Appellate Body held that the SCM Agreement does not dictate any particular methodology for calculating subsidy ratios, nor does it specify which elements should be taken into account in the numerator and denominator.[74] However, the investigating authority must properly match the numerator (the subsidy benefit) with the denominator (the relevant turnover), based on a case-by-case examination of the "*text, design, structure and operation*" of the measure and the "*structure and location of the recipient's production operations*".[75]

[71] Exhibit 22 – Crux Climate, Press Release, dated 3 February 2026.
[72] Exhibit 8 – DGD FY2025 Consolidated Financial Statements, Statements of Income (line item: "Low carbon tax credits"); Note 2 (accounting policy for Clean Fuel Production Credit). SEC Filing (Exhibit 99.1).
[73] Appellate Body Report, *US – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R, 7 September 2016.
[74] Ibid., para. 5.269.
[75] Ibid., para. 5.298.

91. When a subsidy is tied — i.e. the bestowal is connected to, or conditioned upon— the production or sale of that product,[76] the proper denominator is the total sales of that product, not a narrower subset.

92. The CFPC is, by its text, design and operation, a production tax credit tied to "*clean transportation fuel*" produced at a qualified facility and sold during the taxable year. The design, structure and operation of the CFPC does not require the producer to segregate eligible from non-eligible production. Nothing in the programme prevents a company from producing both, some gallons from US soybean oil (earning CFPC), some from foreign UCO (earning nothing, as of 2026), and managing its overall business as a single operation. Indeed, the NPRM (Section 1.45Z-2(a)(3)(ii)) contains a pro-rata allocation rule for common storage:

"If a taxpayer sells transportation fuel that is held in common storage with other fuels that have different emissions rates, the taxpayer is treated as selling a pro rata portion of each fuel produced after December 31, 2024, and held in such common storage".[77]

93. For instance, DGD's entire production line (renewable diesel, renewable naphtha, SAF) falls within that statutory category. DGD does not segregate its production by feedstock origin for financial reporting purposes; its financial statements and exporter questionnaire response treat renewable diesel as a single product line regardless of feedstock.[78] The fact that some gallons may not qualify for the credit (because they use non-eligible feedstock) does not render them a different product. The "*subsidized and exported product*" remains renewable diesel as a whole.

94. The European Commission's established practice in relation to local content subsidies confirms this approach. In multiple cases involving Chinese tax credits and VAT rebates conditioned on the use or purchase of domestic input, a classic local content requirement, the Commission calculated the subsidy by taking the total benefit received (i.e. the total tax or VAT foregone) as the numerator, and the company's total sales turnover as the denominator.[79] The European Commission did not calculate these subsidy rates based on the precise exported goods that generated the credit; it used the total benefit received, not the benefit linked to only the precise exported goods that generated a credit, as numerator.

(ii) Calculation and allocation of subsidy methodology

95. On this basis, the proper method for determining the subsidy amount follows Regulation 26(4) of the Regulations. Where "*a countervailable subsidy is linked to the sale of particular goods*", the TRA must attribute the subsidy "*to all of those goods sold during the period of investigation*". Since the CFPC credit arises upon production *and* sale (Section 45Z(a)(4) requires the fuel to be "*sold by the taxpayer to an unrelated person*"), it is linked to the sale of clean transportation fuel (as defined by the CFPC), and the total credits received must be allocated across total sales of such fuel.

96. The European Commission Guidelines on subsidy calculation provide a directly analogous working example:

---

[76] Ibid., para. 5.270.
[77] Exhibit 23 – NPRM, Clean Fuel Production Credit, Section 1.45Z-2(a)(3)(ii), 89 Fed. Reg. (4 February 2026).
[78] DGD Exporter Questionnaire Response (Non-Confidential), 7 June 2025, Section B.
[79] See, inter alia, Commission Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China, OJ L128, 14.5.2011, p. 18, Recitals 137-159; Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, OJ L 325, 5.12.2013, pp. 66–213, Recitals 336–342.

> *"Instead of receiving export subsidies, company C receives a production subsidy that is specific to the industry concerned and therefore countervailable. The subsidy is allocated over the total sales of the company, not just the exports.*
>
> *[…]company C receives a production subsidy that is specific to the industry concerned and therefore countervailable. The subsidy is allocated over the total sales of the company, not just the exports.*
>
> *(i) Company C produced and sold 200 000 tonnes of product X, 100 000 on the domestic market and 100 000 for export, in the investigation period. In calculating the amount of subsidy in the case of domestic subsidies, only the total sales volume, not the exports, is relevant.*
>
> *(ii) Therefore, if the company in question obtained an income tax exemption and made ECU 4 million profit in the investigation period, the normal tax rate being 25 %, the tax saving of ECU 1 million would be allocated over 200 000 units, giving a subsidy of ECU 5 plus 25 % interest = ECU 6,25 per tonne."*

97. This is precisely the methodology that should apply to the CFPC.[80] The total credits received by a US exporting producer on all eligible production, regardless of feedstock origin or export destination, should be divided by total sales of the relevant goods. **The local content requirement** (domestic feedstock requirement) **determines which production generates the credit; it does not narrow the numerator** (i.e. only exports to a specific jurisdiction) **or the denominator** (only products eligible for the scheme).

98. Applying this methodology to the publicly available data for DGD (as the largest investigated exporter):

- **Numerator (total 45Z credits):** DGD's audited FY2025 financial statements report a "low carbon tax credits" benefit of $598,7 million, net of market price adjustments and selling costs.[81]

- **Denominator (total sales of clean transportation fuel):** DGD reported total revenues of 4,597 million USD for FY2025. Since DGD produces exclusively CFPC-eligible products (renewable diesel, renewable naphtha, and SAF), its total revenue constitutes the appropriate denominator.[82]

- **Ad valorem rate:** Approximately **13%**, i.e. well above the 1% *de minimis* threshold.[83]

99. This is contrary to SBR's submission. In its presentation submitted to the TRA, SBR shows it calculated the 45Z benefit by:

- determining raw material origin;

- applying credit only for US-origin materials; and

- allocating across UK exports only.[84]

---

[80] Guidelines for the Calculation of the Amount of Subsidy in Countervailing Duty Investigations (98/C 394/04), OJ C 394, 17.12.1998.
[81] Exhibit 8 – DGD FY2025 Consolidated Financial Statements, Statements of Income (line item: "Low carbon tax credits"); Note 2 (accounting policy for Clean Fuel Production Credit).
[82] Id.
[83] Id.
[84] SBR Meeting with TRA, 8 January 2026, Non-Confidential Version, slide 13.

100. This methodology uses an incorrect denominator and numerator and is an attempt to confuse the TRA to pretend there is no longer any subsidy in place in the US HVO industry.

101. The **correct numerator** is the **total CFPC credits** actually received by the exporter during the relevant period. This figure is ascertainable from the companies' own financial statements. DGD, for instance, reports its credits as "low carbon tax credits" in its audited Statements of Income. If actual credits received are not available to the TRA because the exporter has not cooperated or the data has not been verified, the TRA is entitled to estimate the benefit. In that context, SBR's approach of determining which feedstock pathways are eligible for the CFPC and applying the applicable credit rate to the corresponding production volumes is, in principle, methodologically sound. However, SBR's analysis limits itself to US-origin UCO as the only eligible feedstock. This is too narrow. The CFPC applies to all HVO produced from any eligible feedstock, regardless of whether the resulting HVO is exported to the UK or sold elsewhere. All of these feedstock pathways generate CFPC credits that flow into the exporter's cost base.

102. The **correct denominator** is the **total value of the exporter's sales of the relevant goods** (i.e. clean transportation fuel, including HVO), not merely the value of exports to the UK or the value of HVO produced from a specific feedstock. This is the standard methodology applied by investigating authorities worldwide.[85] The subsidy benefit is spread across the exporter's entire sales base, not ring-fenced to individual transactions.

103. Notably, RTFA's calculations are broadly consistent with the calculations submitted by P66, a cooperating US exporter. Based on current Greenhouse gases, Regulated Emissions, and Energy use in Technologies ("GREET") values, P66 estimates that HVO produced from US-origin UCO currently generates a CFPC credit equivalent to approximately 64% of the former BTC credit amount. Crucially, as GREET values are bound to improve, e.g. because of new carbon capture projects in the pipeline, this percentage will rapidly increase in the near future.[86] The 13% *ad valorem* rate calculated above for DGD corresponds to approximately 55% of the subsidy margin identified for DGD in the SEF,[87] which is in the same order of magnitude as P66's own estimate. This convergence confirms that the allocation methodology applied here, total credits received divided by total sales, produces results that are consistent (even slightly conservative) as compared to the cooperating exporters' own data.

V. Conclusion

104. Based on the above, RFTA concludes that the TRA took the arguments of the US exporting producers for granted while they are misleading, and factually and legally incorrect.

105. TRA's proposed termination of investigation AS0067 is legally unfounded and should be reversed. The TRA's own SEF established that the CFPC constitutes a "*replacement subsidy programme*" for the BTC, giving rise to "*a continuing subsidy beyond the POI*". Nothing in the 12 March 2026 Notice disturbs that finding.

106. Under both UK law and the WTO SCM Agreement, "*present subsidisation*" is satisfied where the investigated subsidy has been replaced by a programme that (i) bears a sufficiently close nexus with the investigated subsidy, and (ii) based on its statutory language, continues the subsidisation. The CFPC meets every criterion of the "close nexus" test: it covers the same product, the same beneficiaries, and the same type of financial contribution, enacted under the

[85] E.g. Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America, OJ L 179, 10.7.2009, pp. 1–25, Recitals 55–65.
[86] P66 Response to AS0067, 2 January 2026, Section 1.
[87] SEF, para. 181.

same legislation and entering into force the day after the BTC expired. In addition, based on the statutory language of the CFPC, there is no doubt that the subsidies continue.

107. Furthermore, even were the TRA to require evidence of actual CFPC benefits already at this stage of the proceeding (thus post-POI), the available data demonstrates subsidisation well above the *de minimis* thresholds: in 2025, the CFPC subsidy rate, properly calculated by allocating total credits across total sales, exceeds 13% ad valorem for DGD and US imports of HVO account for over 21,6% of total UK imports of the like goods.

108. As shown above, the US government anticipates that the amount of subsidy will progressively increase manifoldly over the following years: from 2,1 billion USD in 2025 to 10,6 billion USD in 2029.

109. Accordingly, the TRA should:

- confirm the existence of present subsidisation on the basis of the statutory language of the CFPC and its close nexus with the BTC;
- issue a final affirmative determination on the basis of the verified BTC data;

110. Alternatively, if the TRA were to consider that evidence of actual CFPC subsidisation needs to be established already at this stage of the procedure (quod non), the TRA should find that there is such subsidization well above de minimis levels, and on that basis issue a final affirmative determination with rates based on the verified BTC data.

* * *