

**KING & SPALDING**

**AD0058 investigation on biodiesel originating in the People's Republic of China**

**Comments on the Note to the File regarding the Existence of Particular Market Situation  
and the Proposed Representative Country**

**submitted by the RTFA (“Renewable Transport Fuel Association”)**

**OPEN VERSION**

17 October 2024

## 1. INTRODUCTION

1. On 27 September 2024, the Trade Remedies Authority (“TRA”) published a Note to the Public File, notifying its provisional choice of Malaysia as the appropriate representative third country, in case the TRA determines that a Particular Market Situation (“PMS”) exists in the biodiesel industry in the domestic market of the People’s Republic of China (“PRC” or China”) (the "Note to the File").
2. By this submission, the Renewable Transport Fuel Association (“RTFA”, “the Applicant”) provides its comments on the TRA’s provisional choice of appropriate representative third country.
3. The present submission will cover the following points:
  - RTFA reiterates the evidence gathered by the RTFA as part of the Application clearly demonstrating the existence of a PMS in the biodiesel industry in the domestic market of PRC (2).
  - RTFA challenges the use of Malaysia as part of both (i) its examination of whether a PMS exists in biodiesel in the People's Republic of China, and (ii) its adjustments to the costs of production and the amounts for administrative, selling, general costs and profits should it conclude that a PMS exists (3).

## 2. RTFA’S PRELIMINARY REMARKS ON THE EXISTENCE OF PMS

4. Regulation 7(2) of the UK’s Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (as amended) (“DSR”) sets out the circumstances in which it is not appropriate to use the comparable price to determine the normal value of the product under investigation. This includes where, because of a particular market situation (“PMS”), such sales do not permit a proper comparison. A PMS includes situations where i) prices are artificially low, ii) there is significant barter trade, iii) or prices reflect non-commercial factors.
5. At the outset, the RTFA submits that the Application contains ample evidence demonstrating that the biodiesel market in China is heavily distorted by government interventions affecting raw material prices, energy costs, wages, access to finance, and market competition, undermining free market conditions, and thereby justifying the application of the PMS methodology.
6. Indeed, as explained in detail in the Application:
  - a. Chinese biodiesel producers benefit from state subsidies, particularly in the collection and processing of used cooking oil (“UCO”). Subsidies, VAT rebates, and tax reductions lower production costs, providing an unfair advantage.

- b. The Shanghai municipal mandate further distorts competition by offering subsidies to domestic producers to boost biodiesel production.
  - c. Energy prices in China are controlled by the government, with state ownership of generation capacity and transmission grids. Biodiesel producers, reliant on energy-intensive processes, benefit from subsidized coal and electricity, contributing to distorted production costs.
  - d. China's labour market is distorted by the Hukou system and the government-controlled All-China Federation of Trade Unions (ACFTU), which suppresses independent wage negotiations. These factors create an artificially cheap labour pool, affecting the cost structure in biodiesel production.
  - e. Public policies in China favor domestic biodiesel producers through direct subsidies, such as land provision, loans, and tax incentives (e.g., VAT refund policy for biodiesel made from UCO).
  - f. China's inadequate enforcement of bankruptcy and property laws leads to non-market outcomes. The state's control over land allocation, especially relevant in land-intensive biodiesel production, further distorts the market.
  - g. Chinese biodiesel producers benefit from preferential financing through state-owned banks, which channel below-market loans to favored industries.
7. Based on the above, the RTFA submits that there is ample evidence that the Chinese biodiesel market is subject to various significant government distortions. These factors prevent fair competition and justify the application of the PMS methodology. The RTFA thus requests the TRA to apply the PMS methodology in the present case.

### 3. COMMENTS ON THE CHOICE OF AN APPROPRIATE REPRESENTATIVE COUNTRY

#### a. Legal Framework

8. Paragraph (4) of Regulation 13 of the DSR provides that:

*“(4) In making adjustments the TRA may have regard to the following: (a) corresponding costs of production, administrative, selling, general costs and profits in an appropriate representative third country or territory; (...)*

*(5) For the purpose of paragraph (4)(a), the TRA may determine whether a third country or territory is an appropriate representative third country or territory taking into account—(a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection of that country or*

*territory; (b) whether the country or territory has a similar level of economic development to the exporting country or territory; and any other factors it considers relevant.”<sup>1</sup>*

9. The RTFA understands that the indicators of a similar level of economic development for the third countries assessed by the TRA includes:
  - a. Income level,
  - b. Literacy rate;
  - c. Poverty ratio;
  - d. Human development index; and
  - e. Life expectancy.
  
10. In addition to the above, in the current case, the TRA will consider additional factors to be specifically relevant when determining an appropriate representative country, including:
  - a. production of biodiesel, and a market for the main raw materials used to produce biodiesel;
  - b. the availability and reliability of data from each of the selected countries; and
  - c. the existence of potential market distortions.

Each of these factors are considered below.

**b. Brazil should be the most Appropriate Representative Country**

11. The TRA provisionally selected Malaysia as the most appropriate representative third country after considering Brazil, the Netherlands, Indonesia, Malaysia, Singapore, South Korea and Taiwan.
  
12. In its Note to Public File, the TRA explained that Malaysia was chosen due to its economic comparability to the PRC and the availability of the necessary data. Additionally, Malaysia was deemed suitable because there are no known market distortions affecting the relevant inputs for biodiesel production.<sup>2</sup>

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<sup>1</sup> The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, UK Statutory Instruments, 2019 No. 450 (latest amended on 23 May 2024) (“UK DS Regulations”). Moreover, Regulation 14 of the DSR, which sets out the rules for the calculation of the normal value in respect of imports from particular foreign countries and territories, provides the same criteria to determine an appropriate third country if the exporting country is a) not a member of the WTO, b) a member of the WTO but the terms of its membership contain specific provisions regarding the determination of the normal value, or c) there is a complete or substantially complete monopoly of its trade and where the domestic prices are fixed by the government.

<sup>2</sup> Note to the File, p. 2.

13. In contrast with the TRA’s provisional findings, the RTFA firmly believes that Brazil is the most appropriate representative country, as detailed in the subsections below.
14. Furthermore, the RTFA objects to Indonesia even being considered as a potential representative country. Indonesia is an unrealistic choice given its significant trade distortions. As previously outlined in Section A.1.4 of the Application, biodiesel originating in Indonesia is subject to anti-dumping measures in Peru and the United States and countervailing duties in the European Union, the UK, and the United States.<sup>3</sup> Additionally, the export taxes imposed by Indonesia have been deemed countervailable subsidies, as highlighted in Commission Implementing Regulation 2019/2092.<sup>4</sup> Moreover, recent rulings by the General Court have upheld that these export restraints are indeed countervailable subsidies under EU law.<sup>5</sup> Given these factors, the RTFA assumes that the TRA would not replace Malaysia with Indonesia, as it exhibits even greater market distortions. Therefore, the RTFA will not further assess Indonesia’s suitability in the following sections.

#### **i. Similar Level of Economic Development**

15. Among the countries shortlisted by the TRA, the Netherlands, Singapore, South Korea and Taiwan are classified by World Bank as “**high-income economies**” having a GNI per capita of \$14,006 or more, and thus disqualify not being at the same level of economic development as China, which is classified as an “**upper-middle income**” country having a GNI per capita between \$4,516 and \$14,005.
16. Even though China, Malaysia and Brazil are all classified as upper-middle income countries by World bank, there are slight differences with regards to literacy rate, poverty ratio and life expectancy:
  - a. According to the most recent World Bank data, Brazil’s adult literacy rate (90.1%) aligns much more closely with that of the PRC (85.2%) than Malaysia’s does. Malaysia’s adult literacy rate, at just 76.2%, not only falls significantly below both Brazil’s and the PRC’s rates, but it also aligns more closely with the average literacy rate for “middle-income” countries (75.1%), rather than the “upper-middle income” category to which China belongs (86.8%). In fact, Malaysia ranks below the global average of 78.3%, further underscoring its unsuitability as a comparable representative country for China. Brazil, by contrast, stands as a far more appropriate benchmark given its proximity to China in terms of key socioeconomic indicators. Malaysia’s educational and developmental gaps reflect a fundamental mismatch with the PRC,

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<sup>3</sup> The Application, p. 11.

<sup>4</sup> Commission Implementing Regulation 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia, OJ L 317, 9.12.2019, p. 42.

<sup>5</sup> T-111/20, Judgment of the General Court, 14 December 2022 – PT Wilmar Bioenergi Indonesia and Others v Commission. None of the Indonesian exporters appealed this General Court’s ruling except one company. The case is currently before the Court of Justice.

casting serious doubt on its appropriateness for the TRA’s analysis when compared to Brazil.<sup>6</sup>

- b. The most recent poverty data from the World Bank at \$2.15/day also demonstrates Brazil’s closer alignment with China compared to Malaysia. Brazil’s poverty headcount ratio, averaging 13% over the years, is much closer to China’s 18.01%, whereas Malaysia sits at an extreme outlier with an average of only 0.7%.<sup>7</sup> This stark difference demonstrates that Malaysia is not a suitable representative country for China. On the other hand, the RTFA observes that the lack of up-to-date data for China and Malaysia from key sources, such as the World Bank and WHO, complicates any valid comparison based on the most recent years. Indeed, there appears to be no official poverty ratio data reported for China and Malaysia for 2020 onwards.<sup>8</sup> Given these limitations, the average poverty ratios over time provide the most reliable comparison, and clearly show Brazil’s closer economic resemblance to China. Therefore, the RTFA submits that the choice of Malaysia as a representative country is seriously flawed, while Brazil remains a far more appropriate candidate.
- c. Furthermore, according to the 2024 Human Development Index (“HDI”) by Country, a metric compiled by the United Nations Development Programme (“UNDP”), Malaysia is classified in a different category compared to Brazil and China. While China and Brazil are ranked in the “High” development band, with HDI scores of 0.788 and 0.760 respectively, Malaysia is positioned in the “Very High” development band, with an HDI score of 0.807.<sup>9</sup> This distinction reinforces the significant differences between Malaysia and both China and Brazil.
- d. In terms of life expectancy, the average data gathered by the World Bank (1960-2022) shows that Malaysia (69.7 years) and Brazil (65.6 years) are nearly equidistant to China (66.7 years).<sup>10</sup> This trend is further supported by the most recent estimates for 2024 published by the US Central Intelligence Agency (“CIA”), which is in line with the RTFA’s position that Malaysia and Brazil are similarly comparable to China on life expectancy<sup>11</sup>:

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<sup>6</sup> World Bank, Literacy rate, adult total (% of people ages 15 and above), UNESCO Institute for Statistics (UIS). UIS.Stat Bulk Data Download Service. Accessed April 24, 2024, available at: <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=XL>

<sup>7</sup> World Bank, Poverty and Inequality Platform, Poverty headcount ratio at \$2.15 a day (2017 PPP) (% of population), available at: <https://data.worldbank.org/indicator/SI.POV.DDAY>

<sup>8</sup> World Bank, Poverty and Inequality Platform, Poverty headcount ratio at \$2.15 a day (2017 PPP) (% of population), available at: <https://data.worldbank.org/indicator/SI.POV.DDAY>

<sup>9</sup> World Population Review, Human Development Index (HDI) by Country 2024, available at: <https://worldpopulationreview.com/country-rankings/hdi-by-country>

<sup>10</sup> World Bank, Life expectancy at birth, total (years) (1) United Nations Population Division. World Population Prospects: 2022 Revision; or derived from male and female life expectancy at birth from sources such as: (2) Statistical databases and publications from national statistical offices; (3) Eurostat: Demographic Statistics: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN>

<sup>11</sup> Central Intelligence Agency (“CIA”), Country Comparisons, Life expectancy at birth, available at: <https://www.cia.gov/the-world-factbook/field/life-expectancy-at-birth/country-comparison/>

Country	Life Expectancy (2024 est.)
China	78.7
Malaysia	76.6
Brazil	76.3

Source: CIA

17. Consequently, while Malaysia slightly overtakes Brazil in life expectancy, this factor alone does not set a magnitude at sufficient levels to justify Malaysia's selection over Brazil as a representative country, particularly when other economic indicators strongly favor Brazil.
18. Considering the above, the preference would be given to Brazil as the most appropriate representative country because it has a closer level of social development to China.

## ii. Biodiesel Production

19. According to the most recent available data, Brazil ranks as the largest biodiesel producing country among the potential representative countries. By contrast, Malaysia ranks 4th among those representative countries.
20. As shown in the table below, Malaysia had 1.4 million tonnes of production on the average 2019-23est, against 8 million tonnes of production for Brazil. Malaysia represented a mere 2,1% in the world production, while Brazil represented 11,73%:

Production of Biodiesel – Average 2019-23est <sup>12</sup>			
Country	Production (million liters)	Production (tonnes) <sup>13</sup>	% in world production
Brazil	7 049	8 007 664	11,73%
Malaysia	1 278	1 451 808	2,1%
South Korea	705	800 880	1,1%
Taiwan <sup>14</sup>	< 995	< 1 130 320	< Below 1,6%
Singapore	No data	No data	No data
The Netherlands <sup>15</sup>	2 096	2 381 056	3,4%

Source: Annex 1 – OECD – FAO Agricultural Outlook 2022-2031, Annex 2 – EBB Statistical Report 2023.

21. Consequently, in terms of representativeness, Brazil should be favored over Malaysia in the present case.

<sup>12</sup> Annex 1 – OECD – FAO Agricultural Outlook 2022-2031, Annex C, p. 321.

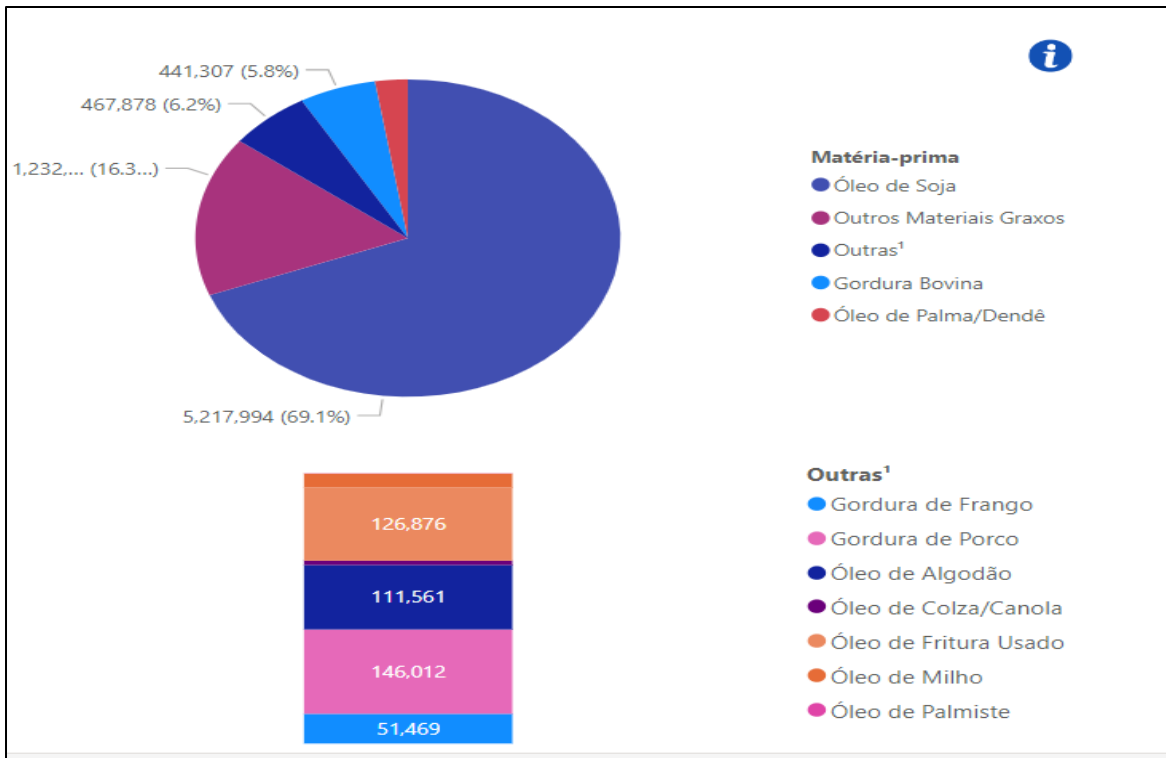
<sup>13</sup> 1 tonne of biodiesel = 1136 liters.

<sup>14</sup> Taiwan is included in the Asia aggregate. 995 is the residual amount calculated by subtracting all the Asian countries individually reported, and it includes Taiwan, Hong Kong and Macau.

<sup>15</sup> Annex 2 – European Biodiesel Board (“EBB”), Statistical Report 2023 available at [https://ebb-eu.org/wp-content/uploads/2024/03/EBB\\_Statistical\\_Report2023-Final.pdf](https://ebb-eu.org/wp-content/uploads/2024/03/EBB_Statistical_Report2023-Final.pdf), p. 5.

**iii. Availability of Reliable Information**

22. The RTFA notes that Brazil is the only country with highly reliable and reasonable SG&A and profit, as Brazilian biodiesel producers have full financial statements, consolidated, audited, IFRS compliant, with substantial overlap with the POI.
23. The RTFA submits that it is market knowledge that there are at least 60 certified biodiesel producers in Brazil, that produce biodiesel from UCO, brown greases and/or POME, which are the key raw materials for biodiesel production. Furthermore, Brazilian biodiesel producers manufacture more and more biodiesel from waste products. As shown below, “other fatty materials” and “other waste products” were the second and third sources of materials used in Brazil representing respectively 16,3% and 6,2% of total feedstock used in 2023:<sup>16</sup>



Source: Annex 3 – ANO, Raw materials used in Brazil for Biodiesel.

<sup>16</sup> Annex 3 – ANP, Raw materials used in Brazil for biodiesel.

Matéria-prima	Quantidade (m <sup>3</sup> )
Óleo de Soja	5,217,994
Outros Materiais Graxos	1,232,069
Outras <sup>1</sup>	467,878
Gordura Bovina	441,307
Óleo de Palma/Dendê	186,885

Source: Annex 3 – ANP, Raw materials used in Brazil for Biodiesel

24. In its Application, RTFA had identified publicly available financial statements for Caramuru Alimentos S.A. e Controladas (“Caramuru”) for 2022 and 2023 Q3. Caramuru is the 5<sup>th</sup> largest biodiesel producer in Brazil, which has two production units in Goiás and Mato Grosso and whose production amounts to around 500 tonnes.<sup>17</sup>
25. The RTFA is thus convinced that the TRA will have sufficiently available and reliable financial data to calculate a reasonable and undistorted SG&A and profit margin once Brazil is selected as the most representative country in the present case.
26. Given the size of the Brazilian biodiesel market and the competitive market conditions in Brazil, one can expect that the financial data of the Brazilian producers are fully reliable to serve the purpose of this investigation. The RTFA remains at the TRA’s disposal should it need to access the financial statements of the listed Brazilian biodiesel producers.
27. By contrast, while there is public financial information for biodiesel producers located in Malaysia, it is impossible to use their profit and SG&A because they are artificially fixed by the Malaysian government. As shown in the next section below, Malaysia is highly similar to Indonesian in terms of government intervention in the biodiesel sector. Thus, the Government of Malaysia imposes a formula for determining the sales of biodiesel in Malaysia which thus fixes artificially the biodiesel prices and thus the profit and SG&A.

#### iv. Existence of Potential Market Distortions

28. In the Note to the File, the TRA explains that it found Malaysia suitably comparable to the PRC based on multiple factors, including the existence of a Used Cooking Oil (“UCO”) market, which is the main raw material used to produce biodiesel in the PRC, in Malaysia. Furthermore, the TRA indicates that “*The TRA has access to the required data, and*

<sup>17</sup> Caramuru’s website, “With two production units in Goiás (Ipameri and São Simão) and one in Mato Grosso (Sorriso), Caramuru reached 550 million liters produced in the year, becoming the fifth largest biodiesel producer in Brazil. A 100% clean and renewable biofuel produced from organic vegetable or animal matter, replacing fossil sources, providing environmental gains for the entire planet as it reduces greenhouse gas emissions in the atmosphere. This has a positive impact on human health and also contributes to social inclusion by increasing the income of family farmers and the communities where the plants are located”, available at: [https://en.caramuru.com/?page\\_id=497](https://en.caramuru.com/?page_id=497).

*Malaysia was deemed suitable on the basis of lack of known market distortions to the relevant inputs in producing biodiesel*.<sup>18</sup>

29. The RTFA strongly disagrees with the TRA, as it is evident that numerous distortive practices are impacting the Malaysian biodiesel market, as outlined below:
- a. The biodiesel price in Malaysia is determined by the Government of Malaysia (“GoM”) and only Malaysian companies can sell biodiesel on the domestic market at fixed prices, affecting competition, prices and costs of biodiesel in this country;
  - b. Similar to Indonesia, Malaysia is a country dominated by palm oil and which has implemented export restraints on crude palm oil affecting prices and costs of biodiesel in this country;
  - c. It is wrong to affirm that Malaysia is a UCO market. As will be shown below, Malaysia mainly imports alleged UCO from Indonesia, a country which applies export taxes on UCO and POME, and a country which is more associated with palm oil exports rather than UCO exports.
- a. *The fixed price for biodiesel sales in Malaysia applied by the GOM*
30. The Malaysian biodiesel market closely mirrors that of Indonesia, where limited purchasing power makes biodiesel unaffordable in these countries. Both countries have adopted a similar strategy in developing their biodiesel industries, including imposing export taxes along the biodiesel value chain to subsidize and stimulate industry growth. Additionally, both employ a system of allocating domestic sales among biodiesel producers at government-fixed prices.<sup>19</sup>
31. It is important to emphasize that in both Malaysia and Indonesia, the general population’s purchasing power does not support the purchase of biodiesel which is generally above the price of diesel. According to a 2011 report by the Center for International Forestry Research, a sustainable biofuel programme in Malaysia necessitates significant subsidies due to: (i) the high cost of crude palm oil (“CPO”), which makes biodiesel production unprofitable, and (ii) subsidized diesel prices, which render biodiesel uncompetitive without government intervention. As a result, government control over biodiesel pricing becomes essential to develop a domestic market for biodiesel in these countries. Without such intervention, there would be no viable domestic biodiesel market.<sup>20</sup>

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<sup>18</sup> Note to the File, p. 2.

<sup>19</sup> See the official website of the Malaysian Government which provides information about biofuel licensing activities: <https://www.kpk.gov.my/kpk/en/agricommodity/osc-biofuel>. The website also indicates that “*Biodiesel price subsidies for certain sectors (Transportation) are coordinated and announced by the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP)*” with a link to this department: <https://www.kpdn.gov.my//ms/>

<sup>20</sup> Please refer to Regulations 2019/1344 and 2019/2092 imposing countervailing duties on biodiesel imports from Indonesia (Commission Implementing Regulation (EU) 2019/1344 of 12 August 2019 imposing a provisional

32. In light of the above, the GoM regulates biodiesel prices through a sort of Automatic Pricing Mechanism (“APM”), to bridge the price gap between biodiesel and diesel. However, while doing so, the APM distorts, at the very least, the profitability of the Malaysian biodiesel producers. This has been confirmed by reliable market intelligence reports. To name a few:
- a. The US Department of Agriculture makes it clear in its GAIN Report on Biofuels in Malaysia dated 10 November 2022 that “[t]o ensure the nation’s biofuel program is financially viable, the GoM uses an Automatic Pricing Mechanism (APM) to set biodiesel prices. Although the GoM has not published how the APM is calculated, researchers at the University of Technology Malaysia (UTM) estimated how the subsidy functioned when the mandate was at seven percent”.<sup>21</sup>
  - b. Furthermore, in its GAIN Report dated 3 December 2023, the USDA reiterated that “[t]o support the biodiesel mandate, the GoM maintained the effective financial support mechanism put in place since 2006. The funding is based on a percentage of tariffs received from CPO produced and managed by the Malaysian Palm Oil Board (MPOB). Currently the funding for the B10 biodiesel is estimated at USD\$9.7 million for calendar year 2023”.<sup>22</sup>
  - c. Publicly available information gathered by the RTFA<sup>23</sup> suggests that the GoM is fixing the biodiesel prices according to the following formula:

**Biodiesel price = RBDPO\* price + 515 MYR (FX rate at 4.2845 vs USD as of 9 October 2024)**

*\*RBDPO = Refined Bleached Deodorized Palm oil = refined palm oil – priced at a premium of CPO; PFAD = Palm fatty acid distillate = palm residue from refining process (5-6% yield) - priced at a discount to CPO; CPO = crude palm oil = crude oil extracted from the palm fruit.*

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countervailing duty on imports of biodiesel originating in Indonesia, OJ L 212, 13/08/2019, p. 1–52. See also Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia, OJ L 317, 09/12/2019, p. 42–95. Please also refer to the Court’s ruling PT Wilmar Bioenergi Indonesia and Others v Commission dated 14 December 2022, which rejected all the claims brought forward by the Indonesian exporters. See Judgment of 14 December 2022, PT Wilmar Bioenergi Indonesia and Others v Commission, T-111/20, EU:T:2022:809, OJ C 129, 20.4.2020

<sup>21</sup> Annex 4 – USDA, Gain Report Biofuels 2022 Malaysia, 10 November 2022, p.4. The GAIN report indicated that details on this widely accepted study can be found at: <http://palmoilis.mpob.gov.my/publications/OPIEJ/opiejv1In1-hanafi.pdf>.

<sup>22</sup> Annex 5 – USDA, Gain Report Biofuels 2023 Malaysia, 3 December 2023, p.2.

<sup>23</sup> Annex 6 – DBS Group Research Equity, “Regional Industry Focus – Plantation companies”, 20 July 2017, p.5; Annex 7 – Presentation by the Deputy President of the Malaysian Biodiesel Association, “Biodiesel Industry’s Role in the Palm Oil Mix”, 12 February 2015.

33. Based on the above, the RTFA concludes that the profit and SG&A of the Malaysian producers are evidently regulated by the GoM and are thus distorted. Therefore, the TRA should refrain from using Malaysia as the representative country for the purpose of calculating undistorted costs, prices and profits.

*b. Export restraints in the Malaysian biodiesel market*

34. Similar to Indonesia, Malaysia applies an export tax on CPO, which is one of the main feedstocks for the biodiesel production in Malaysia. The CPO export duty rate applies as follows:

<b>CPO MARKET PRICE (FOB RM/TONNE)</b>	<b>EXPORT DUTY (%)</b>
< RM2,250.00	NIL
RM2,250 – RM2,400	3.0
RM2,401 – RM2,550	4.5
RM2,551 – RM2,700	5.0
RM2,701 – RM2,850	5.5
RM2,851 – RM3,000	6.0
RM3,001 – RM3,150	6.5
RM3,151 – RM3,300	7.0
RM3,301 – RM3,450	7.5
> RM3,450.00	8.0

**Note: \* - Effective from 1<sup>st</sup> January 2020**  
**Source: Malaysian Royal Customs Department**

*Source: Malaysian Royal Customs Department, Annex 8 – CPO Export Duty Rate*

35. By implementing this tax structure, Malaysia enforces a differential export tax between feedstocks and the finished product, namely biodiesel.
36. Through these export restraints, the GoM encourages operators to retain the raw materials within the domestic market for biodiesel production, thereby depressing the domestic prices of feedstock. This practice provides a net competitive advantage for the Malaysian biodiesel industry and thus qualifies as a standard distortion in raw materials.
37. This program aims at maintaining the feedstock domestically, depressing domestic prices, which thus unfairly benefits downstream industries. Like any other export restriction, this export licensing program is also subject to changes every year, to adapt to market conditions and significantly distort the whole biodiesel value chain in Malaysia. Therefore, it is likely that the scope of application of the export licensing will spread to other HS codes or feedstock types, should that prove effective to regulate the market in Malaysia.
38. Based on the above, the RTFA argues that the Malaysian biodiesel market is subject to export restraints at both upstream and downstream levels.

c. *Malaysia is not a UCO market*

39. The RTFA claims that Malaysia imports a substantial quantity of feedstock to produce biodiesel falling under HS code 151800 from China and Indonesia. However, the RTFA is convinced that such products are not used in Malaysia because Malaysian producers manufacture biodiesel out of CPO, the main raw material available in large quantities in Malaysia. It is market knowledge for biodiesel experts that Malaysia is a hub in which malpractices in the trading of the feedstock are taking place, including blends of different feedstocks.
40. The RTFA believes it is important to recall that the prices of imports of UCO, POME (and potentially brown grease) into Malaysia originating in Indonesia are distorted by the application of an export tax. Indeed, the European Commission has already established in its Regulation 2024/2163 imposing a provisional anti-dumping duty on imports of biodiesel from China that certain volumes of UCO and POME imported to Malaysia originated in Indonesia. The prices of those imports were, however, distorted by the export taxes levied on export of UCO and POME from Indonesia.<sup>24</sup> Although the TRA has yet to publish any figure relating to the factors of production, given that Indonesian UCO and POME are the major sources of imports into Malaysia, the latter cannot and should not be regarded as an appropriate representative country if Indonesian and Chinese imports are excluded because the volume of UCO imports will be largely unrepresentative in terms of volume and thus in terms of price. The RTFA thus submits that it is crucial to identify feedstock prices unaffected by distortions.
41. Nevertheless, should the TRA maintains its provisional selection of Malaysia, the RTFA submits that this does not preclude the use of alternative benchmarks for certain factors of production, especially when it can be demonstrated that such alternative benchmarks yield more reliable and reasonable output for the normal value determination.
42. The RTFA reserves its right to provide further comments on this point and to potentially propose international benchmarks free from distortions, pending the TRA's confirmation of the existence of a PMS and the publication of further details regarding its methodology for using data from the representative country.

#### 4. CONCLUSIONS

43. The RTFA has demonstrated in both its Application and this submission that: (i) a Particular Market Situation (PMS) exists in the Chinese biodiesel market, and (ii) Brazil surpasses Malaysia in all relevant criteria for selecting an appropriate representative

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<sup>24</sup> Recitals 231-232, 237-238 of Commission Implementing Regulation (EU) 2024/2163 of 14 August 2024 imposing a provisional anti-dumping duty on imports of biodiesel originating in the People's Republic of China, OJ L 16.8.2024. For the export tax programs on UCO and POME, please also refer to GAIN Biofuels Annual – Indonesia, p.11. Available at: [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual Jaka rta Indonesia\\_ID2023-0018.pdf](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual%20Jaka%20Indonesia_ID2023-0018.pdf) (last viewed 16 October 2024).

country, as outlined in Paragraphs (4) and (5) of Regulation 13 of the DSR. Additionally, the RTFA has provided substantial *prima facie* evidence, in both its Application and this submission, highlighting significant distortions affecting the prices, costs, and profitability of Malaysian biodiesel producers.

44. Based on the foregoing, the RTFA respectfully requests the TRA to designate Brazil as the representative country in this case and to disregard data from Malaysian producers, contingent upon a determination of the existence of a PMS in the PRC. Should the TRA nonetheless retain Malaysia as the representative country, it must ensure the use of undistorted benchmarks for the factors of production (namely the oil), as well as SG&A expenses and profits.
45. The RTFA reserves the right to submit further comments once additional information becomes accessible.

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