



ER0083 & ER0084

Expiry Reviews of dumped and subsidised biodiesel products originating in the USA (including biodiesel products consigned from Canada)

Comments to the submissions filed by interested parties

Submitted by the Renewable Transport Fuel Association (“RTFA”)

OPEN VERSION

6 May 2026

I. Introduction

1. The present Comments from the Renewable Transport Fuel Association (“RTFA”) provide a response to the submission from the United States (U.S.) Government dated 3 April 2026 and to the Questionnaires responses submitted by Valero Energy Ltd (“Valero”) dated 1 April 2026, in the context of the Expiry Reviews of dumped and subsidised biodiesel products originating in the USA (including biodiesel products consigned from Canada) (“the Expiry reviews”).
2. The Expiry reviews were initiated by the TRA on 28 January 2026. The period of investigation (“POI”) runs from 1 January to 31 December 2025.
3. The U.S. Government and Valero argue that the anti-dumping and countervailing measures should be discontinued for the following reasons:
 - Volume of biodiesel imports into the UK are marginal and several injury indicators of the UK biodiesel industry improved, showing that there could not be a likelihood of recurrence of injurious dumping practices on the UK market;
 - The countervailing duties are no longer necessary as the main subsidy programme (the Blenders Tax Credit, “BTC”) was discontinued during the POI and that the Clean Fuel Production credit (“CFPC”) has allegedly not replaced the BTC.
 - The countervailing duties are no longer necessary as the UK domestic industry does not appear to be injured nor vulnerable to injury and the expiry of the subject measures would not lead to the recurrence of injury.
 - Terminating the anti-dumping/countervailing duties would serve the UK’s economic interests.
4. The RTFA submitted that both the U.S. Government and Valero fail to understand the test required in an expiry review, which is to determine whether injurious dumping and subsidy practices from U.S. exporting producers would continue or recur, should measures be discontinued.
5. The RTFA contends that the arguments submitted by the U.S. Government and Valero are flawed and misleading, both in facts and in law. As will be demonstrated below, all conditions are met to extend the anti-dumping and countervailing measures on biodiesel imports from the U.S. for another five-year period.

II. Legal framework for an expiry review

6. The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the “2019 Regulation”) states in Article 70(1) that “[t]he TRA may conduct a review to consider whether injury to a UK industry in the goods would be likely to continue or recur if the application of an anti-dumping amount or a countervailing amount to the relevant goods were to expire”.
7. Further, Article 70(6) of the 2019 Regulation provides that in conducting an expiry review of anti-dumping or countervailing measures, the TRA must consider whether:
 - “(a) dumping or subsidisation of the goods subject to review is continuing or is likely to recur”;
 - “(b) injury has been removed, or reduced, in whole or in part due to the application of the anti-dumping amount or countervailing amount”;

- “(c) the circumstances of the relevant exporting country or territory, or overseas exporter, are such that the injury caused by the dumped goods or the subsidised imports is likely to continue or recur.”
8. The legal test is therefore whether there is a likelihood of continuation or recurrence of dumping/subsidisation and of injury to the UK biodiesel industry, should the measures be allowed to lapse. The TRA must assess: (i) whether dumping/subsidisation of US biodiesel has continued or is likely to recur; and (ii) whether the injury suffered by the UK industry has continued or is likely to recur given the circumstances. The analysis to be conducted is thus “*exclusively prospective*”, as stated by the WTO Appellate Body in *US – Hot-Rolled Carbon Steel from India*.¹
9. Contrary to what Valero argues, this test does not require evidence that the specific subsidy programme previously found countervailable is still in force, nor does it require the UK industry to show signs of material injury. It is sufficient to demonstrate a likelihood of continuation or recurrence of subsidisation (not of any particular subsidy scheme *per se*), and of injury.
10. It is worth recalling that the evidentiary threshold is also different than in an original investigation. Article 70(5) of the 2019 Regulation requires to demonstrate that the injurious dumping/subsidisation “would be likely” to continue or recur. This is thus a prospective and probabilistic standard, distinct from the affirmative findings of dumping/subsidisation, injury and causal link required in an initial investigation. This is consistent with the WTO Appellate Body's ruling in *US – Carbon Steel*, which confirmed that the evidentiary standards governing the initiation of an original investigation under SCM Article 11 do not apply to sunset reviews under Article 21.3, and that the likelihood standard is structurally distinct from the standard applicable in original proceedings.²
11. The RTFA concludes that the U.S. Government and Valero apply in their reasoning a legal standard that is inconsistent with the framework governing expiry reviews under Article 70 of the 2019 Regulation.
- III. None of the arguments submitted by the U.S. Government and Valero support a discontinuation of anti-dumping and countervailing measures**
12. In their submissions, the U.S. government and Valero have submitted several arguments to allege that measures should be discontinued.
13. For the reasons described in detail below, none of the arguments are valid and are even sometimes misleading.
14. In addition, these interested parties omit to mention that there is absolutely **no cooperation from U.S. FAME exporting producers in this case**, that would allow the TRA to have information and data to be verified on-the-spot. Therefore, the TRA should base its findings on best facts available, namely the information and data submitted in Applicants’ requests.
- 1. There is absolutely no cooperation from U.S. FAME exporting producers in the present case**
15. The RTFA provides below a summary table of the interested parties cooperating in the present case:

¹ Appellate Body Report, *US – Hot-Rolled Carbon Steel from India*, WT/DS436/AB/R, 8 December 2014, para. 4.530.

² Appellate Body Report, *US – Carbon Steel*, WT/DS213/AB/R, adopted 19 December 2002, paras. 88, 103–105.

Interested party	Nature of the party	Additional information
Argent Energy Ltd	Domestic producer	-
Greenergy Fuels Ltd	Domestic producer	-
Olleco	Domestic Producer	-
Valero Energy Ltd	Contributor	Valero Energy Ltd is a subsidiary of Valero Energy Corporation. It is an importer of non-US FAME into the UK ; it owns and operates Pembroke Refinery (in Wales). This means that <u>Valero is not even an importer of the product concerned in the present case.</u>
UK Oil Industry Tax Committee	Contributor	UKOITC is an organisation formed and maintained by tax professionals on behalf of importers and non-UK producers of HVO. UKOITC members also import FAME.
Phillips 66 Ltd	Contributor	Phillips 66 Ltd is a UK producer of lower carbon petroleum products derived from co-processing fossil feedstocks with used cooking oil and tyre pyrolysis oil. ³ Phillips 66 Ltd is an importer of HVO for sales on the UK market and (in 2024) for the purpose of blending fossil diesel. The company's indirect US parent company (Phillips 66 Company) produces renewable naphtha, SAF, and HVO. ⁴ <u>This means that P66 is not even an importer of the product concerned in the present case. It is related to an HVO producer that does not even produce the product concerned in the U.S.</u>
Advanced Biofuels Canada Association	Trade Body	-
Global Affairs Canada	Foreign Government	-
Office of the U.S. Trade Representative	Foreign Government	-
United States of America, Department of Commerce	Foreign Government	-

Source: Public file of investigations ER0083 and ER0084

16. The RTFA concludes that there is **absolutely no cooperation from U.S. FAME biodiesel exporting producers** in the present expiry review investigations.
17. In the case of Valero, the cooperating company is the UK legal entity of the U.S. company Valero Energy Corporation. Valero – who is alleging that measures should be discontinued – is not even an importer of the product concerned in the present case, nor is anyhow related to an U.S. exporting producer. The RTFA is highly surprised that such a party – which has no interest in this case – is contributing to this case by providing information that could not be verified by the TRA. The RTFA expects that the TRA would reject any information submitted by a party which has no interest in this case.
18. The fact that none of the U.S. FAME biodiesel producers are currently cooperating in the present expiry review investigations confirm that these producers refuse to share data and information with the TRA that would allow it to properly conduct its expiry review investigation.

³ Phillips 66 Ltd Registration form for interested parties and contributors for ER0083, 12 February 2026, page 5-6.

⁴ Ibid.

19. Under these circumstances, the TRA is required to apply the best facts available in the present case, which are data and information provided by the Applicant in its expiry review requests and during the investigation.
- 2. The existence of marginal volume of US imports is irrelevant in the context of an expiry review investigation**
20. The U.S. Government argued that the volume of biodiesel imports from the U.S. was marginal and that the UK is a market “*with diminished appeal to U.S. exporters*”.⁵ Similarly, Valero argues that there is “*no incentive to redirect U.S. FAME into the UK*”.⁶
21. The RTFA recalls that the main reason for a decrease of the U.S. biodiesel imports into the UK is precisely the imposition of anti-dumping and countervailing duties in place. The logical test to conduct in the present expiry review is **whether these imports would likely recur, should the measures be discontinued.**
22. At the outset, the RTFA makes it clear that the participation in the present expiry review investigations of the U.S. government, and of an importer (Valero) - which did not even import the product concerned into the UK during the POI⁷ and which is related to a U.S. producer that does not even produce the product concerned⁸ - is the best evidence showing that the US are still highly interested in the UK market to sell dumped and subsidised FAME biodiesel.
23. This high interest in accessing the UK market lies in the fact that the US FAME biodiesel industry has massive overcapacities, are selling at loss on its domestic market, and has limited export opportunities, which makes the UK an attractive market to sell U.S. dumped and subsidised biodiesel.
- a) The U.S biodiesel industry has massive spare capacities that will be redirected to the UK market should measures be allowed to lapse**
24. As shown in the table below, the U.S. FAME biodiesel industry has massive unused capacity, which dramatically fell in 2025. The U.S. FAME biodiesel production decreased in 2024 and 2025, as well as the U.S. FAME biodiesel capacity. This helped improve the capacity utilisation in 2023 and 2024. However, in 2025, the U.S. biodiesel production decreased much more than the U.S. capacity, which led to a capacity utilisation of 58%, leaving a spare capacity of 42%, i.e. 2,754 million tonnes, which **represented almost three times the UK consumption:**

In tonnes - FAME	2022	2023	2024	2025
US biodiesel production	5.404.966	5.654.216	5.569.511	3.832.871
Index (2022=100)	100	105	103	71
US production capacity	7.235.931	6.937.419	6.703.886	6.586.980
Index (2022=100)	100	96	93	91
Capacity utilisation (%)	75%	82%	83%	58%
Spare capacity (in %)	25%	18%	17%	42%

⁵ U.S. Government Comments dated 3 April 2026, paragraph 4.

⁶ Valero’s Questionnaire ER0084, page 9.

⁷ Valero’s Registration form for interested parties and contributors for ER0083 and ER0084, 12 February 2026, page 5-6: “*In the UK, Valero Energy Ltd owns and operates Pembroke Refinery in south west Wales, which is one of Europe’s largest and most complex refineries, has ownership interests in four major pipelines, eight fuel terminals and a large aviation fuels business. Valero Energy Ltd is an importer of non-US origin FAME into the UK. (...)*”

⁸ Valero is a subsidiary of Valero Energy Corporation. To the best of the RTFA’s knowledge, Valero Energy Corporation only produces HVO and SAF in the US, not FAME biodiesel. Its contribution in relation to evidence of absence of dumping or subsidy is thus irrelevant in the present case.

Source: US Energy information administration (EIA), Exhibit 1

25. The U.S. FAME biodiesel capacity is well above the U.S. consumption, showing that the U.S. biodiesel industry is desperately looking for export market opportunities to sell their dumped and subsidised biodiesel. As shown in the table below, in 2025, the U.S. capacity amounted to almost the double of the U.S. FAME biodiesel consumption:

In tonnes - FAME	2022	2023	2024	2025
US production capacity	7 235 931	6 937 419	6 703 886	6 586 980
Index (2022=100)	100	96	93	91
US consumption	5.525.126	6.431.518	6.435.290	3.694.004
Index (2022=100)	100	116	116	67

Source: US Energy information administration (EIA), Exhibit 1

26. The RTFA notes that in its Questionnaire response to the expiry review on anti-dumping duties, Valero alleged that the “*declining capacity, high utilisation rates, and minimal inventories establish that U.S. producers lack both the capacity and the commercial incentive to increase exports to the UK should the measures lapse*”.⁹ The RTFA can only conclude that in the light of the above data, Valero is providing misleading information to the TRA as it fails to put these data in perspective.
27. The same is true to the evolution of inventories. While it is true that inventories of the U.S. biodiesel industry have decreased over the period considered, they cannot be considered “minimal” as alleged by Valero, since they represented in 2025 more than half of the UK FAME biodiesel consumption during the same period and 13% of the U.S. biodiesel consumption:

In tonnes - FAME	2022	2023	2024	2025
US production capacity	504.932	533.709	497.565	478.153
Index (2022=100)	100	106	99	95

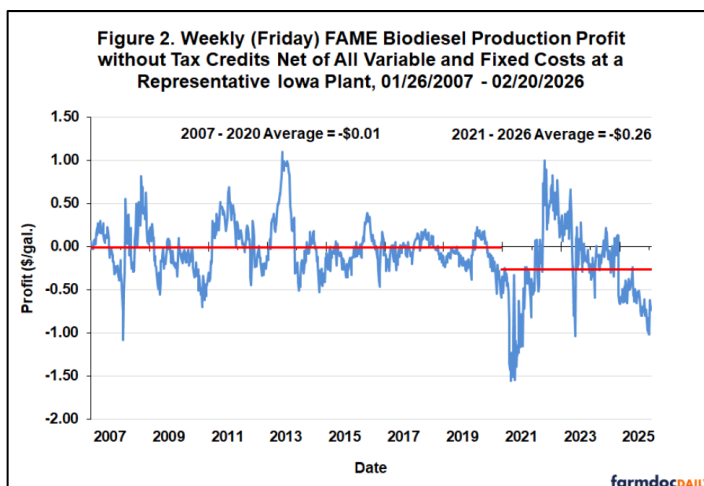
Source: US Energy information administration (EIA), Exhibit 1

28. It results from the above that it is misleading to affirm that the UK is a market “*with diminished appeal to U.S. exporters*”. More than ever, the US FAME biodiesel producers are keen to penetrate again the UK market to sell their dumped and subsidised biodiesel.

b) The U.S domestic market triggers non-profitable sales, leading to massive dumping practices should the anti-dumping measures be allowed to lapse

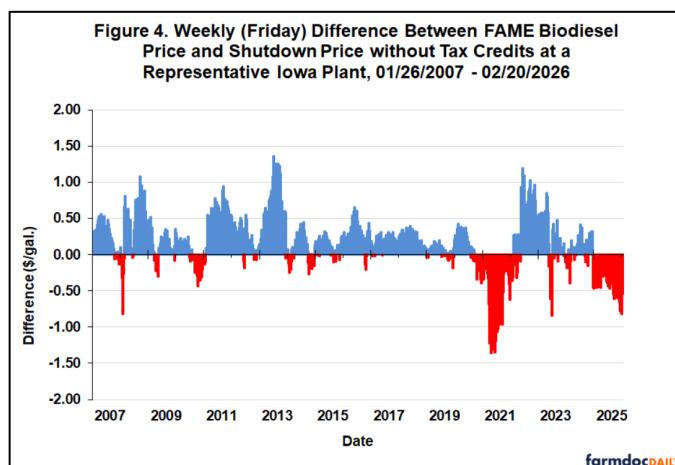
29. The US biodiesel industry is heavily subsidised. This means that its very existence - as well as its size and development – strongly depends on the level of subsidisation provided by the US federal and State governments.
30. The RTFA has reasons to believe that domestic prices of biodiesel (FAME) in the U.S. were made below the costs of production during the POI.
31. As explained by the Department of Agricultural and Consumer Economics of the University of Illinois in a report dated 19 March 2026 on “*Biodiesel Production Profits and Tax Credits*”, the US biodiesel industry experienced systemic negative profit margins over the period 2021-2026, on average amounting to -0,1 USD per gallon (-30 USD per tonne), as shown in the graph below:

⁹ Valero’s Questionnaire ER0084, page 10.



Source: University of Illinois, 2026 Report, Exhibit 2

32. The same report also assessed the financial situation of U.S. biodiesel producers by comparing the weekly U.S. FAME prices at a representative Iowa plant and a computed shutdown price (i.e. biodiesel price plus glycerine revenue minus variable costs of production). As shown in the graph below, since the beginning of 2025, the biodiesel prices were systematically below the shutdown price, showing there has not been a single week where the market signal for biodiesel plants was to keep operating:



Source: University of Illinois, 2026 Report, Exhibit 2

33. In this context, U.S. biodiesel producers have every incentive to sell their products on export markets, such as the UK, which would trigger higher selling prices to at least recover their basic costs to make a profit.
34. The absence of cooperation from US FAME biodiesel producers shows that they are unwilling to share this information with the TRA, as their data would show dumping margins well above those calculated during the original investigation, confirming a likelihood of recurrence of dumping practices on the UK market.
35. U.S. biodiesel producers have very limited available export opportunities because of the multiple trade barriers that have been imposed by third countries against U.S. dumped and subsidised biodiesel, as follows:

- The European Union imposed definitive anti-dumping¹⁰ and countervailing¹¹ duties on U.S. biodiesel imports of biodiesel since July 2009. The measures are still in force today.
 - Peru imposed definitive anti-dumping duties on U.S. biodiesel imports on 25 June 2010.¹² The Peruvian National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI in Spanish) reconducted these measures on 14 December 2016¹³ and on 25 December 2020.¹⁴ On 21 January 2025, INDECOPI initiated an expiry review to determine if this anti-dumping duty should be extended. To the best of the Applicant's knowledge, the investigation is still ongoing.¹⁵
 - Peru has imposed definitive countervailing duties on U.S. biodiesel imports on 25 June 2010.¹⁶ The INDECOPI reconducted these measures on 14 December 2016¹⁷, on 25 December 2020¹⁸ and on 29 December 2025.¹⁹
36. In addition, other biodiesel producing countries have imposed measures on imports of biodiesel from the U.S., closing the door to U.S. exports, as follows:
- In Brazil, the GAIN report on Brazil Biofuels dated 30 September 2025 reported that “[a]s of September 24, 2025, the ANP does not allow import of biodiesel except in “exceptional circumstances,” which in practice means negligible”, and that “[t]he absence of an external market is partly explained by the internal supply capacity and the structure of the Brazilian biodiesel market, which is heavily regulated”.²⁰
 - In Thailand, the GAIN report dated 11 July 2024 highlighted that “(...) it does not permit biodiesel imports”.²¹
 - In the Philippines, the 2025 GAIN report indicates that “Biodiesel importations are not allowed under the Biofuels Act”.²²
37. Finally, the trade tensions initiated by the US against Canada may also reduce further the volume of US exports to this top export destination for US biodiesel. As reported by the GAIN Report on Canadian biofuels dated 25 February 2026, there is likely to be less biodiesel trade between Canada and the U.S. in the foreseeable future: “[u]nder the BTC, Canada imported nearly 100 percent of its biodiesel consumption from the United States and exported nearly 100 percent of its biodiesel production to the United States. With the expiry of the BTC, this is no longer the case and cross-border trade is falling”.²³

¹⁰ Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America, OJ L 179, 10 July 2009, p. 26.

¹¹ 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 July 2009, p. 1.

¹² Resolución n°116-2010/CFD-INDECOPIE, 25 June 2010.

¹³ Resolución n°218-2016/CDB-INDECOPIE, 14 December 2016.

¹⁴ Resolución n°197-2020/CDB-INDECOPIE, 25 December 2020.

¹⁵ Resolución n°008-2025/CDB-INDECOPI, 21 January 2025.

¹⁶ Resolución N° 151-2010/CFD-INDECOPI, 17 August 2010.

¹⁷ Resolución N° 012-2017/CDB-INDECOPI, 23 January 2017.

¹⁸ Resolución n°197-2020/CDB-INDECOPI, 25 December 2020.

¹⁹ Resolución n°273-2025/CDB-INDECOPI, 29 December 2025.

²⁰ Exhibit 3 - GAIN Report - Brazil Biofuels Annual, 30 September 2025.

²¹ Exhibit 4 - GAIN Report - Thailand Biofuels Annual, 11 July 2024.

²² Exhibit 5 - GAIN Report – Philippines Biofuels Annual, 24 June 2025.

²³ Exhibit 6 - GAIN Report – Canada Biofuels Annual, 25 February 2026.

38. Accordingly, there are no significant prospects for U.S. producers to export to other third countries markets. In this context, the UK market is attractive by essence, notably because of its accessibility and insurance of demand created by the RTFO mandate. It would thus be extremely convenient for US biodiesel producers to exploit their spare capacity to the full extent, should the anti-dumping and countervailing measures be allowed to lapse.

3. The interested parties are wrong when they allege that there is no likelihood of continuation or recurrence of subsidisation in the U.S. FAME biodiesel industry

39. In its contribution, Valero alleges that the countervailing duties must be discontinued because the BTC – the main subsidy scheme found in the transition review TS0005 - was not applicable during the POI and that it was not replaced by the CFPC. Valero notably relies on the findings of the 12 March 2026 Notice of Intended Final Negative Determination in case AS0067 (HVO originating in the US), where the TRA determined that the BTC has “*effectively ended by 15 October 2025 ... and no longer offers present subsidisation to the US exporters*”.²⁴

40. At the outset, the RTFA recalls there is no cooperation from US FAME biodiesel producers in the present anti-subsidy expiry review investigation. Therefore, it would be highly surprising to rely on the arguments provided by an importer of FAME which does not even import the product concerned during the POI and has no standing to provide information and data that the US FAME biodiesel producers are supposed to provide for the proper conduct of the expiry review investigation.

41. The RTFA also notes that a Notice of Intended Final Determination issued by the TRA does not constitute a legally binding instrument. Under Article 70 of the 2019 Regulation and paragraph 21(6)-(7) of Schedule 4 to the Act, it is the Secretary of State's acceptance of the TRA's recommendation, and the subsequent public notice made under section 13 of the Act, that gives legal effect to any determination. The Notice of Intended Final Negative Determination in AS0067 thus carries no binding legal authority in the present proceedings and cannot be relied upon by Valero as establishing a legal precedent applicable to this expiry review. Put it differently, this case is still ongoing.

42. As shown below, RTFA considers that there has been a continuation of the main subsidy scheme in the present case, as the BTC has been replaced by the CFPC, contrary to what Valero is alleging. In addition, should the TRA conclude that the CFPC had not replaced the BTC (*quod non*), the RTFA submits that there is a likelihood of recurrence of subsidisation, because the CFPC and other subsidy schemes have been put in place to ensure that the U.S. biodiesel industry benefits from heavy subsidies.

a) Likelihood of continuation of subsidisation of the U.S. biodiesel industry

43. Valero argues that the CFPC cannot be considered a replacement programme for the BTC, as the two schemes (allegedly) differ in design, scope, eligibility and benefit levels. It argues that while the BTC was a blender's credit providing a fixed USD 1.00 per gallon regardless of feedstock or emissions profile, the CFPC is a producer's credit calculated by reference to lifecycle carbon intensity and subject to certain qualifying conditions, including feedstock origin restrictions and prevailing wage requirements.²⁵

44. The RTFA recalls that the question is not whether there was a continuation of a given subsidy programme (here the BTC), but whether there is a continuation of subsidisation. Valero conducts a flawed argumentation by conflating the notions of “subsidisation” and “subsidy” in its analysis,

²⁴ AS0067, Anti-subsidy investigation Hydrotreated Vegetable Oil (HVO) originating in the United States of America, Note to public file, 12 March 2026.

²⁵ Valero's Questionnaire ER0083, page 22.

as the applicable legal test concerns the former, as notably stated in Article 21.1 of the SCM Agreement cited by Valero itself.

45. The use of the term subsidisation is deliberate and has been interpreted by the Appellate Body as having a broader scope than the notion of a specific subsidy. The Panel in US – Carbon Steel clearly provided part of the analysis on likelihood of subsidisation analysis entails “*changes in the original subsidy programmes [and] any new subsidy programmes introduced after the imposition of the original CVD*”.²⁶ Clearly, the scope of present subsidisation expands beyond the boundaries of one specific subsidy program.
46. In US – Hot-Rolled Carbon Steel from India, the Appellate Body held, in the context of an administrative review under SCM Article 21.2, 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*”.²⁷ While this case concerned an administrative review, the underlying principle whereby subsidisation is a broader concept than an individual subsidy scheme is equally applicable in the context of an expiry review under SCM Article 21.3, which also refers to the notion of “subsidisation”.
47. On that basis, the Appellate Body in US – Hot-Rolled Carbon Steel from India then introduced the “close nexus” test, which requires an investigating authority to establish “*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*”.²⁸
48. Thus, the mere fact of removing or changing a subsidy programme – here the BTC – does not *per se* imply the absence of subsidisation, and thus the absence of continuation of the subsidisation. The relevant question in the present proceedings is thus to determine whether the CFPC can be considered as having a sufficiently “close nexus” with the BTC for the subsidisation practices to be considered as continuing. In this context, the Appellate Body in US – Hot-Rolled Carbon Steel from India lists several elements which can be considered to establish the nexus between two subsidies, as follows:
- “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”*.²⁹
49. As previously explained, while the above cited case concerned an administrative review, the underlying principles used to analyse the presence of a close nexus is equally applicable in the context of an expiry review under SCM Article 21.3, which also refers to the notion of “subsidisation”.
50. The close nexus between the BTC and the CFPC is established by a convergence of factors, as both programmes: apply to the same product (FAME), take the same legal form (federal tax

²⁶ Panel report on US – Carbon Steel, WT/DS213/R, 3 July 2002, para. 8.96.

²⁷ Appellate Body report on US – Hot-Rolled Carbon Steel from India, WT/DS436/AB/R, 8 December 2014, 4.539.

²⁸ Ibid., para. 4.543.

²⁹ Appellate Body report on US – Hot-Rolled Carbon Steel from India, WT/DS436/AB/R, 8 December 2014, footnote 1256, page 243.

credits constituting revenue foregone) and share the same granting authority (the US Internal Revenue Service, “IRS”). Both programmes have a nearly identifiable functioning process and provide a maximum benefit of USD 1.00 per gallon. For the BTC to blenders of qualified biodiesel mixtures, and for the CFPC to producers of clean fuel meeting the applicable conditions. Finally, both programmes operate through the same §4101 taxpayer registration mechanism: the BTC required every biodiesel producer or importer to register with the Secretary of the Treasury under §4101,³⁰ and the CFPC imposes the identical registration requirement on taxpayers claiming the credit under §45Z(f)(1)(A)(i)(I).³¹

51. The CFPC entered into force the day after the BTC expired, and legislative history unambiguously confirms that it was enacted as its direct replacement of continued support by the US authorities to the industry, as evidenced by several official US statements:

- 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, excise 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”.*³² (emphasis added)
- In the preamble to the Section 45Z proposed regulations published in the Federal Register (91 Fed. Reg. 5161), the US Department of 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”*.³³
- The Joint Committee on Taxation 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.³⁴
- The Congressional Research Service 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”*.³⁵

52. Considering the above, the arguments formulated in Valero's Questionnaire³⁶ whereby the CFPC cannot be considered a continuation of the BTC is misleading. In practice, the U.S. themselves recognise that the CFPC was designed and enacted by Congress as the direct legislative successor to the BTC and the other prior fuel incentives, applies to the same product, through the same mechanism, granted by the same authority, and entered into force the day after the BTC expired. The close nexus between the two programmes is therefore established, and the subsidisation

³⁰ 26 USC § 4101; 26 USC § 40A(d)(1).

³¹ 26 USC § 45Z(f)(1)(A)(i)(I).

³² Exhibit 7 – 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).

³³ Exhibit 8 – Department of the Treasury, Internal Revenue Service.

³⁴ Exhibit 9 – 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).

³⁵ Exhibit 10 – Congressional Research Service, *The Section 45Z Clean Fuel Production Credit*, IF12502 (updated 18 February 2025).

³⁶ Valero's Questionnaire ER0083, page 22.

practices underlying the BTC must be considered as continuing under the CFPC for the purposes of the present expiry review investigation.

b) Likelihood of recurrence of subsidisation of U.S. biodiesel industry

53. Without prejudice to the arguments set out above regarding the continuation of subsidisation in the U.S. biodiesel industry, the RTFA submits, in the alternative that the TRA were to find that the BTC was not replaced by the CFPC, that there is a likelihood of recurrence of subsidisation in the present case.
54. The assessment of the recurrence of subsidisation may be established where a new or successor measure provides benefits of a similar nature to those conferred by the original subsidy, even if it differs in design or eligibility conditions.
55. In the present case, the CFPC entered into force on 1 January 2025, the day immediately following the expiry of the BTC. As set out above, the CFPC was explicitly enacted by Congress as the direct legislative successor to the BTC and the other prior fuel incentives. The congressional intent is unambiguous: the CFPC was designed to replace, not merely to supplement, the BTC.
56. The CFPC confers a financial contribution in the form of revenue foregone by the US federal government and provides a benefit to eligible producers of clean fuel, including FAME. The maximum benefit available under the CFPC is USD 1.00 per gallon - identical to the maximum benefit conferred by the BTC. While the CFPC introduces a carbon intensity-based calculation methodology and additional qualifying conditions, these do not alter the fundamental nature of the measure as a federal tax credit supporting the production of biodiesel. The existence of additional eligibility conditions does not negate the existence of a subsidy where a financial contribution and a benefit are otherwise established.
57. Critically, the CFPC is not a contingent or uncertain future measure but is already in force. The question of likelihood of recurrence therefore does not require the TRA to speculate about whether a government might re-introduce support measures. In these circumstances, the likelihood of recurrence of subsidisation is not merely probable but has already materialised.
58. The RTFA therefore submits that - whether the CFPC is characterised as a continuation of subsidisation under the BTC or as a new measure giving rise to recurrence of subsidisation - the legal and factual conclusion is the same: subsidisation of U.S. biodiesel is ongoing and will persist for the foreseeable future.
59. In addition, the RTFA also makes it clear that other subsidy programmes have been put in place by the US federal and state governments to the benefit of the U.S. biodiesel industry and are still in force. In this respect, the RTFA refers to the table below which lists all the other subsidy programmes identified in its Application (either programmes formerly found countervailable in the transition review or newly identified programs), which evidence the continuation/recurrence of subsidisation in the U.S. biodiesel industry:

Programme name	Subsidy type
Small Agri-biodiesel Producer Income Tax Credit	Tax Credit
Advanced Energy Research Project	Grant
Alternative Fuel Tax Credit	Tax Credit
USDA Higher Blends Infrastructure Incentive Programme (HBIIP)	Grant
Rural Energy for America Program Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants (REAP)	Grant and guaranteed loan
Iowa Biodiesel Production Incentive Program	Tax Credit
Texas – Fuel Ethanol and Biodiesel Production Incentive Program	Grant
Kentucky Biodiesel Production Credit	Tax Credit

Alabama - Biofuel Production Jobs Tax Credit	Tax Credit
Illinois - Biofuels Tax Exemption	Tax Exemption
Iowa - Renewable Fuel Infrastructure Program	Grant
Michigan - Incentive program for in-state sale and production biodiesel	Tax Credit
Montana - Biodiesel Tax Exemption	Tax Exemption
Montana - Refund for taxes paid on biodiesel by distributor or retailer	Tax Credit
New Mexico - Biodiesel Blending Facility Tax Credit	Tax Credit
North Dakota - Biodiesel and HVO Blender Tax Credit	Tax Credit
North Dakota - Biodiesel and HVO Sales Equipment Tax Credit	Tax Credit
North Dakota - Agriculturally Derived Fuel Production Facility Loan Guarantees	Loan Guarantee
North Dakota - Clean Sustainable Energy Authority	Grant
North Dakota Biofuels Partnership in Assisting Community Expansion (PACE) Loan Program	Loan Interest
Oregon - Production Property Tax Exemption (as part of the Rural Renewable Energy Development (RRED) Zone	Tax Exemption
South Dakota - Biodiesel Blend Tax Credit	Tax Credit
South Dakota - Biodiesel tax reduction	Tax Exemption
South Dakota - Tax Refund for Methanol Used in Biodiesel Production	Tax Credit

Source: Application, page 63 and 76

4. The *de minimis* threshold argument are completely irrelevant in the present case

60. Valero argues that the amount of subsidy is insufficient to reach the thresholds set out by the 2019 Regulation, as follows, “*In 2025, only 0.4% of FAME supplied under the RTFO scheme was made from U.S.-origin feedstock that could potentially qualify under the 45Z PTC. Notably, FAME imports during the POI would fall below the 1% de minimis threshold for a qualifying countervailable subsidy under Regulation 25(4) of the 2019 Regulations. Thus, UK imports of FAME during the POI attributable to any 45Z PTC benefit would be immaterial.*”³⁷ Regulation 25(4) of the 2019 Regulation referred to by Valero provides that a “*qualifying countervailable subsidy*” is one which has a value of at least 1 per cent of all the sales of the goods to which the countervailable subsidy is attributable”.
61. In essence, Valero argues that the fact there were little to no imports of FAME biodiesel during the POI which qualified under the CFPC subsidy programme implies that there are less than 1% of countervailable subsidy. This argument is flawed for the following reasons.
62. First, these *de minimis* thresholds should not be analysed in the context of an expiry review. As already stated, the question is whether there is a likelihood of continuation or recurrence of the subsidisation. In the present context of a replacement subsidy (here the BTC), the legal test applicable in the context of an initial investigation should not be considered.
63. Nevertheless, should the TRA still give regard to this flawed argument, the RTFA argues that:
- The domestic feedstock restriction under the CFPC only entered into force on 1 January 2026, for fuel produced after 31 December 2025.³⁸ During 2025, 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 One Big Beautiful Bill Act (“OBBBA”), signed 4 July 2025, with prospective application from 1 January 2026.³⁹

³⁷ Valero’s Questionnaire ER0083, page 26.

³⁸ 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).

³⁹ 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.

- The assessment of the *de minimis* thresholds should not be made regarding a share of the product concerned which would be subject to the benefits offered by a given subsidy scheme, but regarding the entire product concerned. 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*”. The “*the subsidized and exported product*” means the product defined in the investigation, i.e. the product concerned – here FAME. Thus, the test should not consider a sub-category of that product filtered by feedstock eligibility.
 - Valero does not provide any detailed information on the level of subsidisation under the CPFC that would be received by U.S. biodiesel exporting producers. The absence of cooperation from the US biodiesel producers confirm that the TRA should reach a conclusion that this subsidy will provide significant subsidy to an amount found in the original investigation. The RTFA gathered this information indicating that the level of subsidisation is significant.
64. In light of the above, Valero’s argument pertaining alleged non-compliance with the *de minimis* thresholds is irrelevant in the present case and should be firmly rejected by the TRA.

5. The UK biodiesel industry must not be injured for the measures to be reconducted

65. The U.S. Government and Valero argue that continuation of the anti-dumping and countervailing duties is unnecessary because the UK domestic industry does not appear to be injured or vulnerable to injury. In support of this position, the U.S. Government and Valero points to an increase in UK sales, improved productivity per employee, and declining inventories as evidence of balanced supply-demand conditions and effective stock management.⁴⁰
66. This argumentation reflects a fundamental misapplication of the legal test applicable to an expiry review. The question before the TRA is not whether the UK industry is currently materially injured, but whether there is a likelihood of continuation or recurrence of injury should the anti-dumping and countervailing measures were allowed to lapse. The absence of material injury thus does not support the discontinuation of the anti-dumping and countervailing measures. Equally irrelevant to the analysis in the context of an expiry review is the fact the injury currently suffered by the UK biodiesel industry can be attributed to other causes, such as HVO imports originating in the U.S. and/or biodiesel imports originating in China for instance.⁴¹
67. The TRA must conduct a prospective analysis, assessing the effect that discontinuation of the measures would have on the UK biodiesel industry and should not merely describe its current state. In this regard, the RTFA notes that an improving industry situation is, if anything, evidence that the countervailing measures are fulfilling their intended purpose. Indeed, Article 70(6)(b) of the 2019 Regulation requires the TRA to consider whether injury has been “*removed or reduced, in whole or in part, due to the application of the countervailing amount.*” Where the answer is yes, this should reinforce the TRA's conclusion that the measures are effective and should be continued, not that they are no longer necessary.
68. The RTFA further notes that Valero's presentation of injury indicators appears to be a cherry-picking exercise and does not accurately reflect the overall state of the UK biodiesel industry. The following indicators, considered together, paint a different injury picture than in the Questionnaires:

⁴⁰ Valero’s Questionnaire ER0083, page 13 ; Valero’s Questionnaire ER0084, page 13; U.S. Government Comments dated 3 April 2026, paragraph 6.

⁴¹ Valero’s Questionnaire ER0083, page 15 ; Valero’s Questionnaire ER0084, page 15; U.S. Government Comments dated 3 April 2026, paragraph 7, 9.

- Production declined by 13% between 2022 and the POI, in a context of stable production capacity;
- Inventories fell by 45% between 2022 and the POI. Contrary to Valero's characterisation of this as "*effective stock management*" this decline reflects the fact that, in a context of falling production, sales have been sustained by drawing down stocks — a sign of strain, not stability;
- Profitability remained negative throughout the entire period and deteriorated further, declining by 33% between 2022 and the POI;
- Employment fell by 20% between 2022 and the POI. The productivity improvement underlined by Valero is thus a consequence of this reduction in headcount, not evidence of operational strength;
- Investment declined sharply by 35% between 2022 and the POI.

69. Finally, Valero contends that the increase of market share of the UK industry over the period concerned "*demonstrates that the domestic industry was able to outperform the market, capturing a larger share of declining demand, and further underscores the lack of injury*".⁴² While the UK biodiesel industry did increase its market share between 2022 and the POI - evolving from 13% to 28% - the share remains low, and cannot be considered as satisfactory for a domestic industry, which has only 28% of its domestic market.

70. Taken together, these indicators demonstrate that most of the UK biodiesel industry's economic parameters deteriorated between 2022 and the POI, possibly due to HVO imports from the U.S. and imports from China. The industry is in a fragile financial and economic state, and the U.S.'s Government and Valero's selective reading of the UK industry's injury indicators should not alter this conclusion.

6. There is a likelihood of recurrence of injury should the measures be allowed to lapse

71. Valero argues that the continuation of the anti-dumping and countervailing duties is not necessary as the expiry of these measures would not lead to the recurrence of material injury. Valero argues that the US biodiesel industry is not export-oriented and is almost exclusively focused on serving the internal market. It also argues that the US does not have substantial unused capacity.

72. The RTFA has already demonstrated in previous sections that (i) the U.S. biodiesel industry is export-oriented (because the capacity is significantly higher than the U.S. domestic consumption), (ii) has significant spare capacities to flood the UK market in case measures are discontinued, and (iii) has limited export opportunities showing that the UK market is an important one for US biodiesel.

7. The discontinuation of the measures is not in the UK's economic interest

73. Valero argues that terminating the measures would be in the UK's economic interest, given that the UK is a net importer of FAME facing rising RTFO targets and some of the highest fuel prices in Europe. Valero further contends that, following the expiry of the BTC, US FAME imports would no longer cause injury to the UK industry, and that lifting the measures would therefore deliver positive economic effects without harming domestic producers.⁴³

74. The RTFA strongly rebuts these assertions. Valero's claims are unsubstantiated and lack adequate factual grounding. Notably, the peremptory statement on UK fuel prices is unsupported by any

⁴² Valero's Questionnaire ER0083, page 13 ; Valero's Questionnaire ER0084, page 14.

⁴³ Valero's Questionnaire ER0083, page 21 ; Valero's Questionnaire ER0083, page 20.

evidence. Moreover, Valero's argument that the expiry of the BTC removes the subsidisation concern must be disregarded: as established above, the CFPC continues the subsidisation of US biodiesel (here, FAME) and has a sufficiently close nexus with the BTC to be treated as its direct continuation for the purposes of this expiry review.

75. The RTFA further recalls that the UK biodiesel industry is already operating under significant competitive pressure from imports, and that it has spare capacity to increase production to meet UK demand.
76. The apparent improvement in market share of the UK industry should not be read as evidence of genuine competitive recovery. Should the countervailing measures be discontinued, subsidised US biodiesel would be expected to aggressively re-enter the market. Given the UK industry's already declining capacity utilisation and fragile profitability, a renewed surge of subsidised imports would erode the market share recently gained and again place the UK industry under financial pressure.
77. Far from serving the UK's economic interest, the termination of the anti-dumping and countervailing measures would expose the UK industry to unfairly competitive market conditions, which the anti-dumping and countervailing measures were designed to prevent.
78. Given the massive subsidies provided to the U.S. biodiesel industry, the US biodiesel exporters are predators destroying every third-country market with dumping and subsidised practices. It would be an illusion to believe that there is no likelihood of recurrence of unfair practices should the measures be allowed to lapse. This conclusion applies to FAME biodiesel, but also to all types of biodiesel produced in the U.S. which are currently heavily subsidised, triggering capacities completely disconnected from domestic demands.
79. Neither Valero nor any US exporter provides any guarantee of lower consumer prices should exports to the UK resume. To the contrary, it would kill the very fragile UK biodiesel industry to dominate the UK market and redress prices to the detriment of the UK consumers. In addition, it would leave the UK in a relationship with energy dependence with the U.S. further deteriorating the UK's economic security. In RTFA's views, the discontinuation of the anti-dumping and countervailing measures would be serving only one economic interest: the one of the U.S. biodiesel industry.

IV. Conclusion

80. Based on the above, RFTA concludes that the U.S. Government and Valero's arguments are misleading, and factually and legally incorrect.
81. In view of the above, the RTFA respectfully requests that the TRA disregard in full the arguments laid down by the U.S. Government and Valero and conclude that the conditions required to extend the anti-dumping and countervailing measures for another 5-year period are fulfilled in the present case.

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