



26 May 2026

**Trade Remedies Authority
Premier House
60 Caversham Road
Reading
RG1 7EB**

RE: Government of Canada’s Comments on ER0083: Anti-subsidy expiry review: Biodiesel products from United States and Canada and ER0084: Anti-dumping expiry review: Biodiesel products from United States and Canada

The Government of Canada (“Canada”) appreciates the opportunity to present its views as an interested party in the United Kingdom’s expiry review of its anti-subsidy measure imposed by Trade Remedies notice 2022/09¹ and anti-dumping measure imposed by Trade Remedies notice 2022/08.² Canada’s interests in these proceedings arise because the United Kingdom’s measures were applied to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, to address concerns about potential circumvention of the measures by U.S. exporters.³

In order to extend the application of an expiring anti-subsidy or anti-dumping measure, the Trade Remedies Authority (“TRA”) must determine – based on objective evidence – that the dumping or subsidisation of the subject goods and the injury caused by this dumping or subsidisation to the UK industry is likely to continue or recur.⁴ In the present case, the United Kingdom’s anti-subsidy and anti-dumping measures were originally applied to Canada following a transition review of related European Union (“EU”) measures. This was done despite the absence of any determination by the TRA that “circumvention” was occurring based on evidence, amongst other things, of:

¹ Trade remedies notice 2022/09: countervailing duty on biodiesel products originating in the United States of America (including biodiesel consigned from Canada), 28 January 2026, published by the Secretary of State under regulation 101C(2)(a) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the “Regulations”), available at: <https://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-biodiesel-from-canada-and-usa/trade-remedies-notice-202209-countervailing-duty-on-biodiesel-products-originating-in-the-united-states-of-america-including-biodiesel-consigned-fr> (“Trade remedies notice 2022/09”).

² Trade remedies notice 2022/08: anti-dumping duty on biodiesel products originating in the United States of America (including biodiesel consigned from Canada), 28 January 2026, published by the Secretary of State under regulation 101C(2)(a) of the Regulations, available at: <https://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-biodiesel-from-canada-and-usa/trade-remedies-notice-202208-anti-dumping-duty-on-biodiesel-products-originating-in-the-united-states-of-america-including-biodiesel-consigned-from> (“Trade remedies notice 2022/08”).

³ See, Trade remedies notice 2022/09; and Trade remedies notice 2022/08.

⁴ The Regulations, part 7 chapter 2 regulation 70(1), (5).



- a “change in the pattern of trade” between Canada “and the United Kingdom”;⁵ and
- injury to the UK industry or undermining of the remedial effects of the anti-dumping amount or countervailing amount by imports from Canada.⁶

These factors are required for the TRA to determine that “circumvention” exists under Part 7 Chapter 2 Regulation 73(2) of the *Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019* (“Regulations”). While Part 12 of the Regulations does not specifically address transitioning of an anticircumvention measure, the TRA must provide a reasoned explanation, based on positive evidence, justifying the application of duties on Canadian goods absent a finding of dumping, subsidization, or “circumvention” with regard to the UK market. It did not do so. Further, in the ongoing expiry reviews, the TRA has not requested nor has it received the type of evidence that would permit it to determine whether circumvention via Canada exists (or existed) with regard to the United Kingdom. It is therefore unclear how the TRA could determine whether dumping, subsidisation, and injury has occurred – and is likely to continue or recur absent the expiring measures – in the United Kingdom as a result of biodiesel consigned from Canada. As explained further below, absent any evidence of “circumvention” with regard to the UK market, the TRA must find that the application of the relevant anti-dumping and countervailing amounts to goods from Canada should expire. To find otherwise, without positive evidence, would be an irrational use of the TRA’s statutory powers.⁷

There is no evidence of transshipment of subsidized or dumped U.S. biodiesel through Canada to the United Kingdom on the record in this proceeding or related past proceedings.

In its original 2011 circumvention findings, the European Union found that there was:

- a collapse of U.S. exports of biodiesel to the EU market after the imposition of anti-dumping (AD) and countervailing duties (CVD);
- a surge of Canadian exports to the EU market, over the same period;
- a substantial increase in U.S. exports to Canada, exceeding Canadian demand; and
- insufficient Canadian production capacity to produce biodiesel exported to the EU market.⁸

⁵ The Regulations, part 7 chapter 2 regulation 73(2)(a)(i) (emphasis added).

⁶ The Regulations, part 7 chapter 2 regulation 73(2)(c).

⁷ See, for example, the Regulations, part 6 chapter 3 regulation 62(1) and part 7 chapter 3 regulation 75(2); and Taxation (Cross-border Trade) Act 2018, schedule 4 part 2 para 11(1)-(2) and schedule 4 part 4 para 21(1)-(3). For an explanation of “irrationality” as a ground of judicial review in the United Kingdom, see, *Council of Civil Service Unions v Minister for the Civil Service* [1984] UKHL 9, 22 November 1984, available at: <https://www.bailii.org/uk/cases/UKHL/1984/9.pdf>, pp. 410(D)-411(A) (pdf pp. 37-38).

⁸ See, Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 12) (“EU Regulation 444/2011”), ss 4; and Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the



The EU concluded that the evidence “suggests that the surge of imports from Canada to the Union market relates to the export of US biodiesel consigned from Canada”.⁹ Thus, the EU’s decision to extend its measures was based on a surge of Canadian exports to, and a change in the pattern of trade concerning, the EU Market as a whole. The European Commission does not appear to have examined whether Canadian exports to the United Kingdom, specifically, increased after the imposition of AD duties and CVDs on imports from the United States in 2009 or whether there was a change in the pattern of trade vis-à-vis Canada and the United Kingdom’s market.

In the United Kingdom’s transition reviews¹⁰ of the then-existing EU measures,¹¹ the TRA did not assess whether the underlying EU measures were circumvented via transshipment to the United Kingdom specifically. Indeed, nothing in the public questionnaire responses, the Statements of Essential Facts, or the Final Determinations disclose data or evidence demonstrating the original measures were circumvented via transshipment to the United Kingdom. In fact, the TRA made the following finding that detracts from its recommendation to apply anti-subsidy and anti-dumping measures to Canadian producers:

The data shows that there has been no significant history of direct imports into the UK of the goods subject to review during the [injury period]. Further, it is unlikely that significant amounts of US biodiesel were being indirectly exported to the UK during the injury period via Canada.¹²

definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 1) (“EU Regulation 443/2011”), ss 4.

⁹ EU Regulation 444/2011 at Recital 35 (emphasis added). *See also*, EU Regulation 443/2011 at Recital 35.

¹⁰ TRA Investigations: TD0004 - Biodiesel from United States and Canada, Transition anti-dumping review; and TS0005 - Biodiesel from United States and Canada, Transition anti-subsidy review.

¹¹ Namely, Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 (OJ L 239, 15.9.2015, p. 99); and Commission Implementing Regulation (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 239, 15.9.2015, p. 69).

¹² TS0005 - Biodiesel from United States and Canada, Transition anti-subsidy review, Final Determination, 10 November 2022, para. 274 (emphasis added). Elsewhere, the TRA found:

There have been low levels of imports of the goods subject to review to the UK during the POI. [His Majesty's Revenue and Customs] data shows that 0.26% of UK imports of biodiesel were from the US, and that 0.08% of UK imports of biodiesel were from Canada. The TRA has concluded that importation of subsidised goods from the US and consigned from Canada has not continued during the POI.

See, TRA Investigation: TS0005 - Biodiesel from United States and Canada, Transition anti-subsidy review, Final Determination, 10 November 2022, para. 208; *see also*, TRA Investigation: TD0004 - Biodiesel from United States and Canada, Transition anti-dumping review, Final Determination, 10 November 2022, para 222.



Nonetheless, the TRA presumed that circumvention via transshipment to the United Kingdom would occur based on the practices of exporters to another market over 10 years before the TRA conducted its review. Circumvention cannot be presumed. Instead, the TRA should have assessed whether circumvention existed in accordance with the factors set out in Part 7 Chapter 2 Regulation 73 of the *Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019*.

Finally, in the ongoing expiry reviews, the TRA does not appear to have requested or received evidence permitting an assessment of whether U.S. producers are circumventing the United Kingdom's measures via transshipment of biodiesel through Canada to the United Kingdom market and whether any such transshipment is likely to continue or recur.¹³

As there is no evidence of transshipment of biodiesel via Canada to the United Kingdom, there is no rational basis for the TRA to find that the application of anti-subsidy and anti-dumping measures on biodiesel from Canada, whether declared as originating in Canada or not, should continue.

Nevertheless, if the TRA determines that the anti-subsidy and anti-dumping measures should be extended or modified, exemptions granted to producers of Canadian biodiesel should also be extended – particularly as there is no allegation that Canadian biodiesel is subsidized or dumped.¹⁴

In light of the above, imports from Canada should not be subject to the United Kingdom's anti-subsidy and anti-dumping measures due to the complete lack of evidence demonstrating circumvention of the measures by transshipment through Canada to the United Kingdom. In the alternative, if the TRA maintains anti-circumvention measures despite the lack of evidence justifying those measures, the exemptions granted to Canadian producers should be maintained and other genuine producers of the subject good in Canada should be exempted without delay.

¹³ Meanwhile, the only argument concerning the likelihood of continued circumvention contained in the application for the current expiry review is the following:

The anti-dumping and countervailing [*sic*] on biodiesel imports from the USA imposed by the EU in 2009 were found to be circumvented by means of transshipments via Canada and by a change in the composition of the blend, to slightly modify the product to make it fall outside the product subject to measures. The existence of such practices shows the interest of US producers to find ways to penetrate again the European markets, including the UK, if measures were allowed to lapse (footnotes omitted).

See, TRA Investigations: ER0083 - Biodiesel products originating in the United States of America (including biodiesel consigned from Canada), AD-AS Biodiesel USA Expiry review – Application RTFA – Open, 28 January 2026, p. 61; and ER0084 - Biodiesel products originating in the United States of America (including biodiesel consigned from Canada), AD-AS Biodiesel USA Expiry review – Application RTFA – Open, 28 January 2026, p. 61.

Even if these arguments are taken at face value (despite the lack of evidence), any interest of U.S. producers to enter European markets (including, allegedly, the UK market) cannot serve as the basis for a finding of circumvention, permitting the application of measures against Canada (or, for that matter, any third country) without any evidence of a change in the patterns of trade with the United Kingdom, etc.

¹⁴ Two current Canadian producers of biodiesel (BIOX Corporation and DSM Nutritional Products Canada Inc.) were exempted from the application of the United Kingdom's anti-subsidy and anti-dumping measures in 2022. No evidence has since been presented suggesting that the factual situation has changed such that the exemptions should be removed. Therefore, these exemptions should remain, and other genuine producers of Canadian biodiesel should remain eligible to apply for exemptions.



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Respectfully submitted,

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