

## U.S. GOVERNMENT COMMENTS

### Expiry Review ER0084

## NON-CONFIDENTIAL

### I. INTRODUCTION

1. The United States welcomes the opportunity to provide comments to the Trade Remedies Authority (“TRA”) on issues pertinent to its review of the request for an expiry review of the anti-dumping measures applicable on imports of U.S. biodiesel originating in the United States of America. As addressed below, the TRA should find that any dumping of or injury caused by imports of U.S. biodiesel would not be likely to continue or recur were the anti-dumping measure at issue to expire.

### II. U.S. COMMENTS ON INJURY

2. As discussed in detail below, an evaluation of the likely volume, likely price effects, and likely impact of biodiesel imports from the United States indicates that any injury caused to the U.K. industry by U.S. biodiesel imports would not be likely to continue or recur were the anti-dumping measure to expire.

#### A. LIKELY VOLUME ANALYSIS

3. With respect to likely volume, the United States submits that the volume of subject imports from the United States during the period of review of January 2022 through June 2025 (“POR”) was minimal. Applicants characterize this volume as “marginal” during the POR.<sup>1</sup> Moreover, while the TRA’s analysis of “whether U.S. exporters are able to export to the U.K. market at volume” will focus on U.S. production, capacity, and stocks during the POR,<sup>2</sup> it should also consider these datapoints in the context of the overall attractiveness of the UK market to subject producers.

4. Certain factors emphasized by the Applicants in their request for expiry review, namely apparent U.K. consumption, which declined by 45 percent during the POR, sales values, which declined by 23 percent in this period, and the emergence of low-priced non-subject imports from China that, according to Applicants, had “a dramatic impact” on the domestic industry’s profitability, have resulted in a market with diminished appeal to U.S. exporters.<sup>3</sup> An objective analysis of the likely volume of subject imports from the United States based on positive

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<sup>1</sup> Expiry Application at 97, response to question 6 at para. 1.

<sup>2</sup> See the TRA’s Recommendation to the Secretary of State in TS0005 (Nov. 10, 2022) (“Transition Review”) at 60, paras. 347-348.

<sup>3</sup> Expiry Application at 91, para. 16, 92-93, paras. 19-20, and 93, para. 20.

evidence would require the TRA to frame its examination of the subject industry's ability to export to the U.K. market at volume within the context of these factors, which are pertinent to subject producers' willingness to export to a declining market.

## **B. LIKELY PRICE EFFECTS ANALYSIS**

5. The United States highlights the Applicants' contention that the lack of subject imports during the POR rendered it impossible to provide details of any price undercutting, price depression, or price suppression by reason of subject merchandise during the POR.<sup>4</sup> Applicants instead purport to present an alternative price undercutting analysis based on "a theoretical import price" derived from data for U.S. exports to third-country destinations including Canada, Peru, and the EU, and a "constructed" domestic price purporting to show elevated underselling margins ranging between 91 and 123 percent.<sup>5</sup> However, the resulting calculations are not credible (because they are not grounded in real market data) and well in excess of the likely undercutting margin calculated by the TRA in its November 2022 recommendation to the Secretary of State. Further, the calculations fall to account for the likely price effects of subject imports from the United States based on positive evidence.<sup>6</sup>

## **C. LIKELY IMPACT ANALYSIS**

6. The United States observes that several of the U.K. industry's metrics improved during the POR, including with respect to sales volumes and market shares, which increased, and costs of production and inventories, which declined.<sup>7</sup> Moreover, the declining trade and financial indicators emphasized by Applicants as proof of its vulnerability to injury appear to be driven by the domestic industry's export sales, which declined by 52 percent during the POR.<sup>8</sup> The industry's declining export performance is unrelated to subject imports of biodiesel from the United States, which were marginally present in the U.K. market during this period.

7. With respect to non-attribution, the United States observes that a plain reading of the Application makes clear that the domestic industry experienced injury due to its declining export performance, coupled with declines to apparent U.K. consumption and competition from non-subject imports from China, which have also likely impacted the domestic industry's exports.<sup>9</sup>

8. Further, there is no basis to determine that any alleged dumping would impact biodiesel production, the prices of biodiesel, or the export of biodiesel to the United Kingdom as global U.S. exports of biodiesel declined significantly during the POI. Accordingly, the TRA should

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<sup>4</sup> Expiry Application at 97, response to question 6 at para. 1.

<sup>5</sup> Expiry Application at 98, response to question 6 at para. 4.

<sup>6</sup> See Transition Review at 58-59, paras. 330-337.

<sup>7</sup> See generally Expiry Application at 90-94.

<sup>8</sup> Expiry Application at 95, para. 27.

<sup>9</sup> See generally Expiry Application at 90-95.

conclude that the circumstances of the United States are such that any injury caused by any alleged dumped goods is not likely to continue or recur if the anti-dumping measure expires.

9. Lastly, Applicants alleged in their Application and their recently filed anti-dumping and anti-subsidy applications concerning hydrotreated vegetable oil (“HVO”) from the United States that out-of-scope imports of HVO were the cause of material injury experienced by the industry during the period examined.<sup>10</sup> An objective analysis of the likely impact of subject imports from the United States based on positive evidence would require the TRA, in any affirmative likelihood of injury determination, to carefully explain how subject imports of biodiesel from the United States are likely to injure the domestic industry in circumstances where domestic producers have concurrently attributed the cause of their injury to non-subject merchandise from China and out-of-scope HVO merchandise from the United States.

### **III. CONCLUSION**

10. In conclusion, the United States thanks the TRA for providing an opportunity to address issues pertinent to its analysis of whether any dumping of or injury caused by U.S. biodiesel imports would be likely to continue or recur if the anti-dumping measure at issue were to expire. We appreciate the TRA’s careful consideration of these issues, and urge the TRA to find that the anti-dumping measure should expire.

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<sup>10</sup> See, e.g., Expiry Application at 88-89, paras. 3-7.