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Nick Baird
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United Kingdom

BY E-MAIL: **TS0065@traderemedies.go.uk**

Subject : The Government of Indonesia Submission on the Statement of Essential Facts (SEF) on Transition Review into Biodiesel Originating from Indonesia Imported into the United Kingdom (TS0065)

Dear Mr Baird,

The Government of Indonesia ("GOI") would like to submit its response to the Trade Remedies Authority (TRA) notification concerning the Statement of Essential Facts (SEF) on Transition Review into Biodiesel Originating from Indonesia Imported into the United Kingdom (UK) dated 11 December 2025.

The purpose of issuing the SEF by the TRA is to constitute the definitive factual and legal basis for the TRA's intended final recommendation. As such, it must strictly comply with the substantive and procedural requirements of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), as interpreted and applied by WTO panels and the Appellate Body.

Under the WTO's SCM Agreement, countervailing measures are exceptional trade-restrictive instruments. They may be imposed or maintained only where all statutory conditions are cumulatively satisfied, namely: the existence of a countervailable subsidy, the presence of subsidised imports, injury to the domestic industry and a genuine and substantial causal link between those imports and the alleged injury.

WTO jurisprudence consistently emphasises that the burden of evidence rests entirely with the investigating authority. Those determinations must be based on positive evidence and an objective examination of the facts. Findings cannot be sustained based on conjecture, policy preferences, or deliberately concluded by selecting adverse facts.[1]

Indonesia submits that the SEF fails to satisfy these requirements in multiple, independent, and legally dispositive respects. Taken individually and cumulatively, these failures render the continuation of the countervailing measures inconsistent with the SCM Agreement.

I. ABSENCE OF BIODIESEL SUBSIDISED IMPORTS FROM INDONESIA: FUNDAMENTAL AND DISPOSITIVE LEGAL DEFECT

The central and uncontested fact in this review is that **there were no, or at most negligible, imports of biodiesel from Indonesia into the United Kingdom during the period of investigation**. The SEF itself explicitly acknowledges this finding, relying on HMRC 10-digit customs declaration data (para. 59), which constitutes the most authoritative and objective evidence of import volumes into the UK market. This conclusion is corroborated by Statistics Indonesia (BPS) export data and international trade statistics (Trademap), which consistently show zero biodiesel exports from Indonesia to the UK for the relevant period.

Table 1

Indonesia's Export Realization with the United Kingdom
Period 2019 - 2024

HS	DESCRIPTION	COUNTRY	VALUE : US$						YoY %	Trend (%)
			2019	2020	2021	2022	2023	2024	24/23	19 - 24
38260010	Biodiesel, not containing petroleum oil, Coconut methyl ester (CME)	United Kingdom								
38260021	Biodiesel,not contain petroleum oil,Coconut methyl ester (CME),With ester alkyl content 96.5% or more but	United Kingdom								
38260022	Biodiesel, not containing petroleum oil,Coconut methyl ester (CME),With ester alkyl content exceeding 98 %	United Kingdom								
38260029	Biodiesel contain noPetroleum oil,palmMethylEster(incl palm kernelmethylester)inAdditionthealkylEst	United Kingdom								
38260090	In addition to biodiesel, containing petroleum oil	United Kingdom								

Source: Statistic Indonesia, processed, December 2025

[1] Panel Report, US – Pipe and Tubes (Turkey), para 7.190.

As with the data BPS above, the Trademap data show that there are no Indonesian exports of biodiesel to the UK (Table 2) and no UK imports of biodiesel from Indonesia (Table 3). These factual findings are **legally decisive** under the SCM Agreement.

Table 2

Bilateral trade between United Kingdom and Indonesia 2019-2024
Product: 382600 Biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum ...

No.	Exporter	VALUE IN USD THOUSAND						YoY 2024/2023 (%)	Market Share 2024 (%)
		2019	2020	2021	2022	2023	2024		
1	World	668.159	24.295	191.995	462.471	305.851	73.840	-75,86	100
2	**Indonesia**	0	0	0	0	0	0	-	-

Sources: Trademap, processed, December 2025

Table 3

Bilateral trade between Indonesia and United Kingdom 2019-2024
Product: 382600 Biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum ...

No.	Importer	VALUE IN USD THOUSAND						YoY 2024/2023 (%)	Market Share 2024 (%)
		2019	2020	2021	2022	2023	2024		
1	Dunia	1.017.008	1.098.994	1.292.721	2.530.164	1.835.288	928.393	-49,41	100
2	**United Kingdom**	0	0	0	0	0	0	-	-

Sources: Trademap, processed, December 2025

Article 11.2 of the SCM Agreement states that:

"An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph".

Article 15.2 of the SCM Agreement states that:

"With regard to the volume of the subsidized imports, the investigating authorities shall consider ***whether there has been a significant increase in subsidized imports****, either in absolute terms or relative to production or consumption in the importing Member..."*

And Article 19.1 of the SCM Agreement states that:

"..., a member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn".

Article 11.2 of the SCM Agreement requires that **an investigation be supported by sufficient evidence of the existence of subsidised imports, injury, and a causal link between them**. Article 15.2 further requires investigating authorities to assess whether **there has been a significant increase in the volume of subsidised imports**. Most critically, Article 19.1 provides, in mandatory terms, that **countervailing duties may be imposed only where a subsidy exists and the subsidised imports cause injury.**

Taken together, Articles 11.2, 15.2, and 19.1 establish that the existence of subsidised imports is a legal precondition, not a matter of inference or presumption. Where subsidised imports are absent or negligible in fact, the legal foundation for any finding of injury or causation necessarily collapses. In such circumstances, an investigating authority cannot lawfully make affirmative determinations of injury or causation, as there are no imports capable of causing injury through the effects of a subsidy.

The TRA does not dispute the absence of imports. Instead, the SEF suggests (para. 94) that such absence "may be due to the effectiveness of the measure". This reasoning is legally impermissible.

The burden of demonstrating the likelihood of continuation or recurrence rests entirely with the investigating authority. It cannot be discharged by inference from the mere existence of the measure.

WTO law also does not permit an investigating authority to presume the existence, continuation, or recurrence of subsidised imports merely because a countervailing duty is in place. Likelihood must be demonstrated based on positive evidence, not hypothesised to justify the maintenance of a measure.

A determination based on assumptions such as "effectiveness of the measure", rather than evidence from the review period, would be vulnerable to challenge under UK public law standards (irrationality/failure to take relevant considerations into account).

The determinations must be based on positive evidence and an objective examination of the facts. It prohibits reliance on conjecture or hypothetical assumptions where official data demonstrate the absence of imports. Where an authority's own customs data confirm that subsidised imports did not occur during the investigation period, such evidence cannot be disregarded, minimised, or explained away through speculative reasoning.

Accordingly, the absence of biodiesel imports from Indonesia into the United Kingdom constitutes a fundamental and legally dispositive defect. In the absence of the very imports that the measures purport to counteract, the continuation of countervailing duties is legally impermissible under Article 19.1 of the SCM Agreement. This defect is objective in nature and **cannot be cured by further analysis, explanation, or conjecture**.

II. DEFECTIVE LIKELIHOOD ANALYSIS

The deficiencies in the TRA's likelihood analysis flow directly from the absence of imports. Rather than conducting a forward-looking assessment grounded in review-period evidence, the SEF relies primarily on historical findings made by the European Commission in 2019 and on a descriptive account of Indonesian legislation governing biodiesel-related measures.

Article 21.3 of the SCM Agreement states that:

"..., any definitive countervailing duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. The duty may remain in force pending the outcome of such a review".

Article 21.4 of the SCM Agreement states that:

"The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article..."

Articles 21.3 and 21.4 of the SCM Agreement require a genuine and forward-looking assessment, based on current evidence, of whether the termination of the measures is likely to result in the continuation or recurrence of subsidies and injury.

WTO jurisprudence makes clear that a sunset review must not merely replicate the conclusions of the initial investigation; it must be based on credible evidence and demonstrate that the continuation of the countervailing duties is justified to eliminate injury to the domestic industry for the period under review.[2]

The SEF did not analyse current export behaviour, current pricing to the UK market, or any contemporaneous commercial incentives that would make the UK an attractive destination for Indonesian biodiesel. Instead, the SEF has records showing that Indonesia informed the TRA that there were no exports to the UK during the investigation period and that biodiesel production under the blending mandate has mainly been absorbed domestically.

In the absence of contemporaneous exports, a legal inquiry under Article 21.3 cannot be substituted by abstract assumptions about what might happen if the measures were lifted. Consequently, the TRA's determination of probability is **legally speculative and inconsistent** with Articles 21.3 and 21.4 of the SCM Agreement. This defect cannot be corrected retrospectively.

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[2] Appellate Body Report, *US – Carbon Steel*, paras. 88 and 103.

III. THE LACK OF ECONOMIC PLAUSIBILITY SUPPORTING RECURRENCE

Beyond its legal deficiencies, the TRA's theory that exports of biodiesel from Indonesia would recur absent the measure is also economically implausible. Indonesian biodiesel producers operate in a market characterised by strong domestic absorption, driven by mandatory blending requirements (B35/B40), steadily increasing domestic demand, and the availability of alternative export markets that involve lower regulatory and compliance costs.

By contrast, the United Kingdom market is governed by stringent sustainability certification requirements, crop caps, and regulatory constraints under the Renewable Transport Fuel Obligation (RTFO). Unlike a physical blending mandate, the RTFO operates as a certificate-based compliance scheme and does not guarantee physical offtake, volume, or price. These regulatory features materially shape commercial incentives and render the UK a comparatively unattractive destination for Indonesian biodiesel from an economic perspective.

These market realities are legally relevant. They demonstrate that the **TRA has failed to identify** any **objective economic basis for concluding that exports would be likely to resume.** In the absence of contemporaneous trade flows, identifiable commercial incentives, or other market indicators pointing toward renewed exports, the TRA's assessment under Article 21.3 of the SCM Agreement rests on conjecture rather than on an objective examination of prevailing commercial conditions, as required under WTO law.

IV. FAILURE TO ESTABLISH THE EXISTENCE OF A BENEFIT

The SEF asserts that payments made through the Oil Palm Plantation Fund ("OPPF"), administered by BPDP, constitute a countervailable subsidy.

However, under Article 1.1(b) of the SCM Agreement, a financial contribution constitutes a subsidy only if it confers a benefit.

Article 1.1 (b) of the SCM Agreement states that:

"A benefit is thereby conferred."

Furthermore, Article 14(d) further requires that any alleged benefit be assessed by reference to prevailing market conditions.

Article 14 (d) of the SCM Agreement states that:

"The provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of

provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale)."

WTO jurisprudence confirms that a benefit exists only where the recipient is placed in a more advantageous position than it would have been under market conditions.[3]

While the SEF describes the mechanics and aggregate amounts of OPPF payments, it does not identify any market benchmark, conduct a counterfactual analysis, or demonstrate that Indonesian biodiesel producers were better off than they would have been absent the alleged measure.

The identification of a financial contribution without a corresponding demonstration of benefit is legally insufficient. In the absence of a proper Article 14 of the SCM Agreement benchmark analysis, the TRA **cannot lawfully establish the existence of a benefit** within the meaning of the SCM Agreement.

V. ALLEGED PROVISION OF CPO FOR LESS THAN ADEQUATE REMUNERATION (LTAR): INCONSISTENCY WITH THE DS618 PANEL FINDINGS

The TRA further maintains that Indonesia provides crude palm oil (CPO) to biodiesel producers at Less Than Adequate Remuneration (LTAR), through export taxes and alleged government influence over domestic prices. These allegations **are substantially the same as the claims examined and rejected** by the WTO Panel in *European Union – Countervailing Duties on Biodiesel from Indonesia* (DS618).[4]

In DS618, the Panel found that the European Union (EU) failed to demonstrate that Indonesia entrusted or directed private CPO suppliers, and failed to establish any limitation on access to CPO, whether in law or in fact.[5] The Panel further concluded that, **in the absence of entrustment or direction and any limitation of access, the evidentiary basis required to sustain a finding of less than adequate remuneration was not established under Articles 1.1 and 14 of the SCM Agreement**.[6]

While the Panel Report in DS618 has not yet been adopted due to a pending appeal, its legal reasoning constitutes persuasive authority within the WTO system. Consistency and predictability require that an investigating authority cannot simply reproduce legal theories previously examined and rejected, without addressing and remedying the specific deficiencies identified by a WTO panel. Consistency and predictability in the WTO system require that prior panel reasoning not be disregarded without a cogent explanation.

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[3] Appellate Body Report, *Canada – Aircraft*, paras 157 and 158.

[4] Panel Report, *European Union – Countervailing Duties on Biodiesel from Indonesia*, paras 7.4.4–7.4.5.

[5] Ibid.

[6] Ibid, paras. 7.4.5–7.4.6.

In the present case, the TRA has **failed to distinguish its analysis** from the defects identified in DS618 and has **not provided a benchmark analysis** consistent with Article 14 of the SCM Agreement. Accordingly, the TRA's LTAR finding is **inconsistent** with Articles 1.1 and 14 of the SCM Agreement.[7]

VI. BONDED ZONE SCHEME: ABSENCE OF A COUNTERVAILABLE SUBSIDY

The SEF further alleges that Indonesia's bonded zone regime constitutes a countervailable subsidy on the basis of foregone government revenue. This allegation is **legally unfounded**. Subsidy shall be deemed to exist if:

Article 1.1(a)(1)(ii) of the SCM Agreement states that:

"Government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)."

Under Article 1.1(a)(1)(ii) of the SCM Agreement, the existence of foregone revenue does not, by itself, establish a subsidy. Any such measure must also satisfy the specificity requirement under Article 2.1 of the SCM Agreement, which requires that a subsidy be specific, meaning limited in law or in fact to certain enterprises or industries, and generally available measures governed by objective and neutral criteria cannot satisfy this requirement. Bonded zone facilities in Indonesia are usually available across sectors, operate pursuant to neutral eligibility criteria, and are not limited, either de jure or de facto, to biodiesel producers.

The WTO Panel in *European Union – Countervailing Duties on Biodiesel from Indonesia* (DS618) examined the bonded zone scheme and found that the European Commission's reasoning **failed to demonstrate how the bonded zone regime contributed to any price advantage or trade effects**, noting that the Commission's analysis focused exclusively on the alleged provision of CPO for less than adequate remuneration. The Panel observed that it was **not readily apparent** how the bonded zone scheme could be linked to lower input costs or competitive advantage for biodiesel producers.[8]

Crucially, the Panel further recorded Indonesia's uncontested explanation that the bonded zone scheme **does not incentivise exports**, and that any alleged benefit under the scheme was economically negligible, amounting to a maximum subsidy margin of only 0.16%.[9] The Panel thus rejected the notion that the bonded zone regime could generate adverse trade effects.

The generally available fiscal or customs regimes do not constitute specific subsidies absent evidence of access limitation. The measures of general application also cannot satisfy the specificity requirement absent proof of targeting

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[7] Appellate Body Report, *Canada – Aircraft*, paras 157 and 158.

[8] Panel Report, *European Union – Countervailing Duties on Biodiesel from Indonesia*, paras 7.440–7.441.

[9] ibid para 7.439.

or restriction, so Indonesia's bonded zone regime is not de jure specific because access is not explicitly limited to certain enterprises or industries, and eligibility is governed by objective and neutral criteria clearly set out in law and official regulations.[10]

In the present case, the SEF does not demonstrate that access to bonded zones is limited to biodiesel producers, nor does it establish any de facto preferential treatment. Accordingly, the bonded zone regime **cannot lawfully be treated as a countervailable subsidy**, and any finding to the contrary is **inconsistent** with Articles 1.1 and 2.1 of the SCM Agreement.

VII. INJURY, CAUSATION, AND NON-ATTRIBUTION

Article 15.5 of the SCM Agreement requires a genuine and substantial causal link between subsidised imports and injury. It imposes a distinct, broader obligation to demonstrate causation by assessing all relevant evidence, including a non-attribution analysis of other injury factors.[11]

Injuries caused by other factors may not be attributable to subsidised imports. In Article 15.5 of the SCM Agreement, non-attribution is also adequately addressed by requiring that injury caused by known factors other than subsidised imports not be attributed to those imports.[12]

The SEF itself recognises that domestic feedstock costs, policy changes, and market conditions unrelated to imports from Indonesia significantly influenced the performance of the UK biodiesel industry. The injury determination is **inconsistent** with Article 15.5 of the SCM Agreement.

In the absence of subsidised imports during the review period, the investigating authority is legally precluded from reaching any affirmative findings regarding likelihood, injury, or causation.

Based on the data and analysis we have presented above, and referring to the extension of the imposition of Countervailing Duty by the EU, the GOI is of the view that the imposition of CVD on biodiesel imports by the EU is irrelevant for the UK, considering that there are no biodiesel imports from Indonesia in the UK, so there is no proven causal relationship between the loss of the domestic market, especially in the UK, caused by imports from Indonesia. The GOI expects the UK government to stop the imposition of CVD on biodiesel imports from Indonesia in the UK and not to apply the amount of subsidy margin that has been implemented by the EU.

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[10] Appellate Body Report, *US – Countervailing Measures (China)*, para. 4.120.
[11] Appellate Body Report, *China – GOES*, para. 150.
[12] Appellate Body Report, *Japan – DRAMs (Korea)*, paras. 267-268.

The GOI believes that the authority will maintain fairness, transparency, and objectivity in its decisions.

I thank you for your kind consideration and cooperation.