

**AD0068 and AS0067 – Anti-dumping and anti-subsidy investigations concerning HVO
from the U.S.**

Comments on the Statement of Essential Facts in AS0067

29 December 2025

EXECUTIVE SUMMARY

The TRA should immediately terminate the subsidy investigation into the imports of HVO from the U.S. for the following reasons: (i) the main countervailable subsidy, the BTC, ended on 1 January 2025 and the new scheme 45Z PTC provides substantially lower benefits [Confidential: commercially sensitive information]; (ii) HVO and FAME are fundamentally different in physical, commercial, functional, and production characteristics, and therefore there are not “like products”; (iii) the HVO and FAME price comparison is flawed due to the arbitrary omission of FAME commodity codes and use of non-representative years; (iv) the data used in the injury assessment unjustifiably omits certain FAME commodity codes which make the assessment unreliable; (v) U.S. HVO imports did not cause any injury to UK FAME industry; (vi) [Confidential: commercially sensitive information]; and (vii) the UK would have substantial net welfare losses if the measures were imposed.

The BTC ended on 1 January 2025. 45Z PTC has not replaced the BTC. The scheme currently in force, 45Z PTC, provides significantly lower benefits [Confidential: commercially sensitive information]. Imposing duties based on the discontinued BTC would breach the UK’s WTO obligations which require duties to reflect only “current” subsidization and be based on a prospective analysis.

If the TRA does not terminate AS0067, it must assess whether 45Z PTC is a countervailable subsidy and recalculate duties based on its much lower benefits and excluding HVO exports to the UK that do not qualify for 45Z PTC. [Confidential: commercially sensitive information]

HVO and FAME are fundamentally different in physical, commercial, functional, and production characteristics, and are classified under separate commodity codes, meaning they are not “like products.” The TRA’s own findings confirm these differences and preclude the determination that the products bear close resemblance.

The TRA’s price comparison is flawed due to missing FAME commodity codes and use of non-representative years. RTFO supply data provides no evidence that HVO is used for B7 blends or that HVO and FAME compete in the same commercial markets.

The TRA confused the scope of goods concerned (HVO) with the scope of like products (HVO and FAME), leading to incomplete and inaccurate assessment and comparison. Key FAME commodity codes are omitted from the analysis.

The TRA must either exclude FAME as a like product or include all relevant FAME commodity codes within the scope of like products. An objective comparison requires that the goods concerned are represented by commodity codes 2710194329 and 2710194339, and the like

products – by all AS0067 in-scope codes as well as 3826001020, 3826001029, 3826001050, 3826001059, 3826001089, and 3826001099.

The TRA's injury assessment is unreliable due to incomplete data, unfair product comparisons, and the impact of previous anti-dumping and anti-subsidy measures. In particular, the construction of a UK price of a hypothetical and non-existent product cannot be considered an objective comparison. A price of a non-existent good cannot be undercut, depressed or suppressed. The assessment of the effects of U.S. HVO imports on UK prices is therefore inadequate and unreliable.

Further, U.S. HVO imports in 2021 and 2022 were negligible due to anti-dumping and anti-subsidy measures in force until 10 November 2022, so only 2023 and 2024 should be considered for injury analysis.

The TRA's method of constructing the theoretical price of a non-existent product (UK HVO) by calculating the difference between U.S. HVO and FAME is inadequate because of different market and regulatory conditions between the U.S. and UK and significant price differences.

The TRA's causality assessment is fundamentally flawed because it relies on incomplete and inconsistent data and an incomplete product scope, failing to attribute injury to U.S. HVO imports. China was the largest importer of like products during the injury period, and the TRA's conclusion that Chinese imports do not break the causal chain is unsupported by reliable evidence representing all HVO and FAME imports to the UK. [Confidential: commercially sensitive information]

The proposed measures would result in substantial net welfare losses, disproportionately impact higher-blend users, and undermine UK environmental and cost-of-living objectives. The TRA's considered scenarios are aspirational and do not reflect market realities or consider all welfare cost such as likely U.S. retaliatory measures.

The TRA's own analysis shows the Economic Interest Test is not met, especially for high-blend HVO, and recommends no measures be implemented against U.S. HVO in light of the TRA's guidance.

1. INTRODUCTION

Diamond Green Diesel LLC (“**DGD**”) and Valero Energy Ltd (“**VEL**”) respectfully submit comments in response to the Statement of Essential Facts (“**SEF**”) in case AS0067 - HVO originating in the United States of America (“**AS0067**”) of the Trade Remedies Authority (“**TRA**”) dated 28 November 2025.¹ DGD and VEL substantiate below the reasons which should lead the TRA to terminate AS0067.

DGD and VEL support to the TRA’s decision to terminate the anti-dumping investigation (“**AD0068**”) concerning HVO imports from the U.S.²

2. **AS0067 SHOULD BE TERMINATED BECAUSE THE BLENDERS TAX CREDIT SCHEME HAS BEEN DISCONTINUED AND 45Z PRODUCTION TAX CREDIT IS NOT A CONTINUATION THAT OFFERS LIKE BENEFITS**

As required by the WTO Agreement on Subsidies and Countervailing Measures (“**SCM Agreement**”), confirmed by WTO case law, the level of countervailing duties must reflect “current” or “present” subsidization. In other words, it must correspond to the amount of benefit (if any) that is still expected to be granted to the recipient at the time the duty is imposed.

Considering that the Blenders Tax Credit (“**BTC**”) was discontinued on 1 January 2025 and that the 45Z Production Tax Credit (“**45Z PTC**”, also referred to in the SEF as the Clean Fuel Production Credit (“**CFPC**”)) is not a continuation of the BTC, DGD and VEL respectfully request that the TRA terminates the AS0067 investigation. Should the TRA nevertheless decide to proceed, DGD and VEL request that any countervailing duties imposed be recalculated. [Confidential: commercially sensitive information]

2.1 **The main countervailable subsidy was terminated prior to the imposition of the prospective countervailing measures**

As acknowledged by the TRA in the SEF:

- The U.S. Biodiesel Mixture Credit, known as the BTC, was terminated on 1 January 2025³ and is no longer in force.
- The 45Z PTC began to apply on 2 January 2025, i.e., after the period of investigation in AS0067 (“**POI**”).⁴
- The 45Z PTC is characterised as a replacement program to the BTC,⁵ and the “[i]nitial information suggests that it will be more limited in scope than the BTC”.⁶ DGD and VEL maintain that the 45Z PTC is not a continuation of the BTC.

As explained below, the imposition of countervailing duties based on the BTC scheme is inconsistent with the UK’s obligations under the SCM Agreement and is also contrary to the established practice of the European Commission.

¹ AS0067 – Statement of Essential Facts (28 November 2025), available [here](#).

² AD0068 – Notification of Termination (28 November 2025), available [here](#).

³ SEF, para. 171.

⁴ SEF, paras. 213 and 215.

⁵ SEF, para. 213.

⁶ SEF, para. 569.

2.2 The imposition of countervailing measures based on the BTC scheme is inconsistent with the UK's obligations under Article 19.1 of the SCM Agreement

The principle that countervailing duties may only be imposed to offset “current” subsidization is one of the cornerstones of the SCM Agreement. As the TRA is aware, anti-subsidy investigations require a prospective analysis that considers not only events during the period of investigation (“IP”), but also any relevant changes that may have occurred after or during that period⁷ – particularly where subsidies have been withdrawn or no longer confer any benefit.

This principle is explicitly reflected in Article 19.1 of the SCM Agreement, which provides that a WTO Member may impose a countervailing duty “unless the subsidy or subsidies are withdrawn”. It is undisputable that the BTC scheme has been terminated. Imposing countervailing measures based on the discontinued BTC scheme would be inconsistent with the UK's obligations under Article 19.1 of the SCM Agreement. Accordingly, AS0067 should also be terminated, as countervailing measures cannot be imposed once the subsidy has ceased to exist.

2.3 The imposition of countervailing measures based on the BTC scheme is inconsistent with the UK's obligations under Article 19.4 of the SCM Agreement

Article 19.4 of the SCM Agreement stipulates that no countervailing duty shall be levied “in excess of the amount of the subsidy found to exist”. This provision requires that countervailing duties must not exceed the amount of “present” or “current” subsidization.

In *Japan – DRAMs (Korea)*, the WTO panel and the Appellate Body set forth the legal standard relating to Article 19.4 of the SCM Agreement. Notably, the Japanese investigating authority (“JIA”) had allocated the benefit of 2001 subsidies over the period 2001 to 2005 and imposed countervailing duties in 2006, when its finding of subsidization in respect of those subsidies for the period of investigation no longer demonstrated that there was “current” subsidization. The panel found that the JIA had levied countervailing duties “in excess of the amount of the subsidy found to exist”, contrary to Article 19.4 of the SCM Agreement.⁸ These findings were upheld on appeal.⁹

In its report, the WTO Panel explained that “countervailing duties may only be imposed if there is present subsidization at the time of duty imposition”.¹⁰ It further clarified that:

“[T]he use of a past period of investigation does not negate the need for an investigating authority to be satisfied that there is present subsidization. Rather, the historical data from the period of investigation “is being used to draw conclusions about the current situation,” “[b]ecause the conditions to impose [a duty] are to be assessed with respect to the current situation”. In this sense, the situation during the period of investigation is used as a proxy for the situation pertaining “current[ly]”, at the time of imposition. In the case of non-recurring subsidies, if the review of the period of investigation indicates that the subsidy will no longer exist at the time of

⁷ As established by WTO jurisprudence, the more recent data are “especially important to the investigation” (see: Panel Report, *Mexico – Steel Pipes and Tubes*, para. 7.228).

⁸ Panel Report, *Japan – DRAMs (Korea)*, para. 7.361.

⁹ Appellate Body Report, *Japan – DRAMs (Korea)*, para. 210.

¹⁰ Panel Report, *Japan – DRAMs (Korea)*, para. 7.355.

imposition, the existence of subsidization during the period of investigation will not suffice to demonstrate "current" subsidization at the time of imposition".¹¹

As follows from the above, an investigating authority typically uses a specific IP as a proxy to assess current subsidization. However, countervailing measures cannot be imposed if there is affirmative evidence that the subsidy will no longer exist at the time the measures are imposed, even if the subsidy existed during the IP. In other words, if there is definitive evidence that the subsidy was granted for a limited period and is not recurring, imposing countervailing duties would be inconsistent with Article 19.4 of the SCM Agreement.

On appeal, the WTO Appellate Body highlighted that Article 19.4, by its terms, refers to a subsidy "found to exist",¹² and stated that it saw:

"[N]o requirement in Article 19.4 for an investigating authority to conduct a new investigation or to 'update' the determination at the time of imposition of a countervailing duty in order to confirm the continued existence of the subsidy. However, in the case of a **non-recurring subsidy**, a countervailing duty cannot be imposed if the investigating authority has made a finding in the course of its investigation as to the duration of the subsidy and, according to that finding, the subsidy is no longer in existence at the time that the Member makes a final determination to impose a countervailing duty".¹³

This is because, in such circumstances, any countervailing duty imposed would exceed the amount of subsidy found to exist, which is contrary to the provisions of Article 19.4 of the SCM Agreement. This consideration is especially important in the context of non-recurring subsidies. If there is evidence that a subsidy was granted for a specific duration and no longer exists at the time countervailing measures are imposed, as in the present investigation, then such measures cannot be applied to countervail that subsidy.

The BTC scheme was a non-recurring subsidy, which was terminated on 1 January 2025. Moreover, as observed by the TRA and will be further elaborated below, the 45Z PTC does not constitute a continuation of the BTC. The discontinuation of the BTC program should therefore result in the immediate termination of AS0067. The imposition of the countervailing measures based on the BTC scheme would be inconsistent with the UK's obligations under Article 19.4 of the SCM Agreement.

2.4 The European Commission's practice confirms that countervailing duties may only be imposed to offset current subsidization

As reflected in the European Commission's practice: (i) proceedings should be terminated when the main or sole subsidy scheme under investigation ceases to exist; (ii) if several subsidy schemes are under investigation and some are withdrawn prior to the final determination, those schemes should not be countervailed; and (iii) countervailing duties should be repealed if a subsidy scheme is terminated after the imposition of definitive measures. While the European Commission's practice is not binding on the TRA, we consider that it would be useful guidance given the broad similarities between the EU and UK's regulatory regimes implementing the SCM Agreement.

¹¹ Panel Report, *Japan – DRAMS*, para.7.357, referring to Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice*, para. 165.

¹² See Appellate Body Report, *Japan – DRAMS (Korea)*, para. 210.

¹³ See Appellate Body Report, *Japan – DRAMS (Korea)*, para. 210.

First, if the main or sole countervailable subsidy ceases to exist before the imposition of countervailing duties, the European Commission terminates the investigation. Notably, in the anti-subsidy investigation against imports of bioethanol from the US, the European Commission found that “the main subsidy scheme, the mixture tax credit, which conferred countervailable subsidies to U.S. recipients in the IP, expired ... [after the IP] and has not been reintroduced”.¹⁴

In that case, the investigation into subsidisation and injury covered the period from 1 October 2010 to 30 September 2011. The findings indicated that the bioethanol mixture tax credit procured during the IP was withdrawn at the end of 2011.¹⁵ In this regard, the European Commission stated that:

“(184) The investigation showed that the bioethanol mixture tax credit procured during the IP was withdrawn at the end of 2011. Given that this event occurred after the IP, the Commission thus contacted in several occasions the US authorities to receive further information with regard to the definitive termination of the main subsidy scheme.

(185) The information collected during the investigation at the premises of the US authorities and the further clarification they provided demonstrated that certain amounts were paid out to US recipients just after the IP, namely in the US fiscal year 2012, which ran from 1 October 2011 to 30 September 2012. Whilst these amounts would still lead to continued subsidisation above the de minimis threshold in the first quarter of fiscal year 2012, the amounts paid out after that period, and in particular at the end of 2012, would be negligible in view of the cessation of the main subsidy scheme in December 2011. Up to now, there are no signs of reinstatement of the mixture tax credit and any reinstatement of that scheme would normally require an act of the United States Congress.

[...]

*(189) [T]he investigation established that the main subsidy scheme, the mixture tax credit, expired in the end of 2011 and has not been reintroduced. The information available clearly point to the cessation of the main subsidy scheme. Up to now, there are no signs of reinstatement of the mixture tax credit and any reinstatement of that scheme would normally require an act of the United States Congress.*¹⁶

In view of the discontinuation of the main subsidy scheme identified in the IP, and the absence of any indication that it would be reintroduced, the European Commission concluded that the imposition of definitive countervailing measures was not warranted and terminated the case.¹⁷

¹⁴ Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012, 2012 O.J. (L 352) 70, recital (182).

¹⁵ Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012, 2012 O.J. (L 352) 70, recital (184).

¹⁶ Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012, 2012 O.J. (L 352) 70, recitals (184)-(189).

¹⁷ Commission Decision of 20 December 2012 terminating the anti-subsidy proceeding concerning imports of bioethanol originating in the United States of America and terminating the registration of such imports imposed by Regulation (EU) No 771/2012, 2012 O.J. (L 352) 70, recitals (192)-(193).

The circumstances in the present investigation are very similar. Given that the BTC was discontinued on 1 January 2025, i.e., after the POI but before the imposition of countervailing measures, the present investigation should likewise be terminated.

Second, in cases where an investigation covered multiple subsidy schemes and some had been withdrawn or had expired before the final determination, the European Commission has never countervailed expired schemes. The rationale behind this is that there was no “current” subsidisation. DGD and VEL provide several examples below:

- **Polyethylene terephthalate (PET) from Iran, Pakistan and the United Arab Emirates:** This investigation covered several subsidy schemes. After the IP, the PET sector in Pakistan was excluded from certain schemes. Specifically, the investigation period ran from 1 July 2008 to 30 June 2009, while the PET sector in Pakistan was excluded from the Export Finance Scheme on 28 June 2010 and from tariff protection on purchases of PTA on 1 July 2010. As these schemes no longer conferred any benefit on the exporters concerned, it was concluded that they “should not be countervailed”.¹⁸
- **Coated fine paper from China:** The exporting producers claimed that one tax exemption scheme had been withdrawn before the imposition of countervailing duties. The European Commission confirmed that the scheme was “withdrawn and was not replaced by any other incentive referring to the same tax obligation”. On this basis, the European Commission decided to not countervail this scheme.¹⁹
- **Broad-spectrum antibiotics from India:** During the investigation, it was determined that one of the exporters was no longer eligible to receive benefits under one of the subsidy schemes. Consequently, it was concluded that “this scheme shall not be countervailed”.²⁰

Thirdly, in cases where the subsidy amount was allocated to a period that ends prior to the expiry of the measures, the European Commission found that the subsidy had previously ceased to confer a benefit. A notable example is the DRAMs investigation in which the exporting producers had benefited from several subsidy schemes during the IP. However, upon review, the European Commission repealed the countervailing duties on imports of DRAMs from Korea, concluding that the subsidies were non-recurring and had ceased to exist after the allocation period had expired. The European Commission explained that:

“(78) The measures imposed in the original investigation related to one-off, non-recurring subsidies, allocated over a set period of time and as such allocation period is deemed to begin at the time the benefit was actually received, it is considered that the measures imposed by the definitive duty Regulation expired on 1 January 2006. As the debt rollover and the principalised interest of December 2002 ceased to confer a benefit on Hynix on 13 July 2005 and as the debt-to-equity swap of

¹⁸ Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates, 2010 O.J. (L 254) 10, recitals (3), (60)-(61) and (75)-(76).

¹⁹ Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China, 2011 O.J. (L 128) 18, recitals (168)-(169) and (347)-(348).

²⁰ Council Regulation (EC) No 713/2005 of 10 May 2005 imposing a definitive countervailing duty on imports of certain broad spectrum antibiotics originating in India, 2005 O.J. (L 121) 1, recital (118).

December 2002 expired on 31 December 2007, the measures should be repealed with effect from 31 December 2007 and the proceeding terminated.

(79) Consequently, the definitive countervailing duties paid or entered in the accounts ... should be repaid or remitted.

[...]

(82) In its comments, the Community industry also claimed that measures should remain in force until they expire in August 2008, five years after the imposition of the definitive measures in order to offset countervailable subsidisation and cite Article 19 of the basic Regulation in support of such claim. However, Article 19 provides, inter alia, the possibility to repeal measures if they are no longer necessary to countervail subsidisation. Furthermore, Article 15 of the basic Regulation [the equivalent of Article 19 of the SCM Agreement], which provides the basis for the imposition of measures, states that measures can be imposed — and by analogy, maintained — ‘unless the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved.’ As the result of the investigation indicates that the subsidies given to Hynix have ceased to confer a benefit, the measures cannot be kept in force and the claim of the Community industry has to be rejected.²¹

Thus, in the DRAMs review, the European Commission not only repealed the countervailing measures in question, but also did so with retroactive effect, determining that countervailing duties already paid should be refunded.²²

By the same token, the European Commission repealed the measures in the following investigations:

- **PET from India:** The European Commission had established that the exporting producers benefited from several subsidy schemes during the IP. However, in the partial interim review, it found that several subsidy schemes targeted by the countervailing measures had expired, been withdrawn, or were replaced by other schemes not applicable to the product concerned. Consequently, the European Commission concluded that no measures should be imposed with respect to these subsidy schemes and amended the overall subsidy rates applicable to the exporting producers accordingly.²³
- **Graphite electrode systems and PET from India:** Following the imposition of definitive countervailing duties on graphite electrode systems and PET from India, the Government of India (“GOI”) submitted that the circumstances relating to two subsidy schemes – the Duty Entitlement Passbook Scheme and the Income Tax Exemption Scheme – had changed, and that these changes were of a lasting nature. The GOI argued that the overall level of subsidisation was likely to have decreased and that the measures established on the basis of these schemes

²¹ Council Regulation (EC) No 320/2008 of 7 April 2008 repealing the countervailing duty imposed on imports of certain electronic microcircuits known as DRAMs (Dynamic Random Access Memories) originating in the Republic of Korea and terminating the proceeding, 2008 O.J. (L 96) 1, recitals (78)-(79) and (82).

²² Council Regulation (EC) No 320/2008 of 7 April 2008 repealing the countervailing duty imposed on imports of certain electronic microcircuits known as DRAMs (Dynamic Random Access Memories) originating in the Republic of Korea and terminating the proceeding, 2008 O.J. (L 96) 1, Article 1 and Article 2.

²³ Commission Implementing Regulation (EU) 2015/1350 of 3 August 2015 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India, 2015 O.J. (L 208) 10, recitals (94), (106), (117)-(118) and (139)-(140).

should therefore be revised. In the partial interim reviews, the European Commission determined that one of these schemes – the Income Tax Exemption Scheme – had been terminated and should no longer be subject to countervailing measures.²⁴

These examples demonstrate the European Commission's consistent approach: in cases where subsidy schemes ceased to exist after the imposition of definitive measures, the countervailing duties are terminated. Where a subsidy scheme was withdrawn or expired before the final determination, the European Commission does not apply countervailing measures with respect to such schemes. Additionally, the European Commission terminated investigations where the main subsidy schemes under investigation were discontinued before the imposition of measures.

Given that the BTC, the main potentially countervailable subsidy scheme in AS0067, was discontinued before the TRA's final determination, this investigation should be terminated.

2.5 The 45Z PTC is significantly more limited than the BTC Scheme

As recognised by the TRA, "[i]nitial information suggests that the [45Z PTC] will be more limited in scope than the BTC"²⁵ targeting producers of biofuels, which bases the value of the income tax credit on the carbon intensity of the produced fuel. [Confidential: commercially sensitive information]

The entry into force of the 45Z PTC on 1 January 2025 marks a significant shift in U.S. federal tax incentives for biofuels, primarily as a result of the Inflation Reduction Act ("IRA") of 2022. Notably:

- The BTC was a blender's tax credit, providing a \$1 per gallon credit to entities blending FAME or HVO.
- The 45Z PTC is a production tax credit based on the carbon intensity ("CI") of the fuel. The amount of the credit is determined by the lifecycle greenhouse gas ("GHG") emissions of the fuel, with lower carbon intensity resulting in a higher credit. Additionally, the 45Z PTC credit includes prevailing wage and apprenticeship requirements for facilities to qualify for the full credit amount. [Confidential: commercially sensitive information]

Thus, the 45Z PTC is significantly more limited in scope compared to the BTC Scheme. In this context, should the TRA decide not to terminate the present investigation, DGD and VEL respectfully request that the TRA recalculates the subsidy margins to reflect the adequately lower level of benefits provided under the 45Z PTC relative to the BTC scheme.

2.6 45Z PTC is not a countervailable subsidy [Confidential: commercially sensitive information]

²⁴ Council Regulation (EC) No 1354/2008 of 18 December 2008 amending Regulation (EC) No 1628/2004 imposing a definitive countervailing duty on imports of certain graphite electrode systems originating in India and Regulation (EC) No 1629/2004 imposing a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India, 2008 O.J. (L 350) 24, recitals (3), (57)-(58); Council Regulation (EC) No 1286/2008 of 16 December 2008 amending Regulation (EC) No 193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India, 2008 O.J. (L 340) 1, recitals (5), (52)-(53).

²⁵ SEF, para. 569.

Should the TRA decide not to terminate the investigations, it is essential to recognise that the material changes between the 45Z PTC scheme and the BTC²⁶ preclude any “carry-over” of the TRA’s BTC-based assessment to the 45Z PTC. Even if the TRA considers the 45Z PTC to be a “replacement” for the BTC, this does not discharge the TRA of its obligation to conduct an appropriate assessment of the 45Z PTC scheme.

With the expiry of the BTC scheme, the TRA must prospectively determine whether there is any subsidy that would need to be countervailed. This requires an assessment of the potential benefits conferred by the 45Z PTC to exporters of the goods concerned. Simply labelling the 45Z PTC as a “replacement” for the BTC does not satisfy the requirement to examine whether, and to what extent, exports of the goods concerned actually “benefit” from a countervailable subsidy.

(a) **Legal requirements under WTO law**

Articles 10 and 32.1 of the SCM Agreement require investigating authorities to ensure that the imposition of countervailing duties is in accordance with the provision of the SCM Agreement and Article VI of the General Agreement on Tariffs and Trade 1994 (“**GATT 1994**”).

To impose countervailing duties in the present case, the TRA must first establish that the 45Z PTC constitutes a countervailable “subsidy”. Article VI:3 of the GATT 1994 and Articles 10 and 32.1 of the SCM Agreement require that a WTO Member may only impose countervailing duties to the extent of the subsidy actually demonstrated to exist. Moreover, as explained above, Article 19.4 prohibits the levying of countervailing duties “in excess” of the amount of subsidy found to exist. Any duty imposed on a product not determined to be subsidised is, by definition, “in excess” and inconsistent with WTO obligations.

Article 1 of the SCM Agreement establishes the foundations of any determination to apply countervailing measures. As a precondition to a countervailable subsidy determination, Article 1 requires three affirmative findings:

- a financial contribution by a government (Article 1.1(a)),
- that the financial contribution thereby confers a benefit (Article 1.1(b)); and
- that the first two elements above were provided on a specific basis (Article 1.2).

The second criterion (also set out in Regulation 21 of the UK Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (“**UK Regulations**”)) requires the TRA to determine whether the company under investigation actually received a countervailable benefit during the POI. There is no “subsidy” where no “benefit” has been conferred. [Confidential: commercially sensitive information]

To demonstrate the existence of a benefit in the present case, the TRA must: (i) establish whether an exporter received a financial contribution; and (ii) if so, determine the amount of benefit conferred. In the present case, the TRA has not carried out such analysis with respect to the 45Z PTC.

As explained above, where an investigating authority fails to establish the existence and extent of a subsidy in accordance with the terms of the SCM Agreement and

²⁶ SEF, para. 569.

Article VI of the GATT 1994 (including the calculation of the benefit allegedly accruing to the investigated products), such investigating authority would impose countervailing duties inconsistently with Articles 10, 19.4 and 32.1 of the SCM Agreement.²⁷ [Confidential: commercially sensitive information]

Therefore, the 45Z PTC is not a countervailable “subsidy” within the meaning of the SCM Agreement, and the imposition of countervailing duties would breach both UK obligations under the WTO Agreements and UK regulations. [Confidential: commercially sensitive information]

(b) **HVO not qualified under the 45Z PTC scheme should be excluded from the measures**

Article 15.1 of the SCM Agreement requires that the authority's assessment concerns “subsidised imports”, rather than covering effects of imports in general. This was confirmed by the WTO Appellate Body in *US – Carbon Steel (India)*:

“By referring to ‘subsidized imports’, rather than to ‘imports’ generally, Article 15.1 requires that the injury analysis in the framework of Article 15, including Article 15.3, be limited to consideration of injury caused by ‘subsidized imports’, rather than covering effects of imports in general.”²⁸

While the BTC was applied to HVO regardless of the feedstock used, 45Z PTC considerably limits the range of eligible feedstock.

Should the TRA nevertheless consider that 45Z PTC is a countervailable subsidy, it should (i) reassess the level of benefits under the 45Z PTC (as explained above); and (ii) exclude from the scope of the countervailing duties all HVO made with feedstock not eligible for benefits under 45Z PTC. Countervailing duties applicable to HVO made from feedstock not eligible for benefits under 45Z PTC would violate Article 19.4 of the SCM Agreement, which requires that any countervailing duty imposed on an imported product does not exceed the amount of subsidy found to exist in respect of the imported product.

Regulation 26(2) of the UK Regulations specifies that the TRA must attribute the subsidy only to the specific category of goods for which a countervailable subsidy has been received. [Confidential: commercially sensitive information]

3. **HVO AND FAME ARE NOT “LIKE PRODUCTS”**

DGD and VEL respectfully disagree with the TRA’s finding that HVO and FAME are “like products.” We request that the TRA reconsider its determination in light of the following key points:

- The TRA's assessment of HVO and FAME's characteristics precludes the finding of "likeness".
- The TRA’s conclusion that the U.S. HVO import price to the UK is lower than the UK FAME sales price²⁹ is based on incomplete and inaccurate data and assumptions.

²⁷ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 358.

²⁸ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.581.

²⁹ SEF, paras. 112 -113.

- An increase in HVO supply under the RTFO³⁰ does not imply that HVO is being used in B7 blends.

3.1 HVO and FAME have different fundamental characteristics and production processes

As previously submitted by DGD and VEL, HVO and FAME do not meet the criteria for "like products" under the UK Regulations. According to the TRA Guidance,³¹ to assess likeness, the non-exhaustive list of criteria is applied:

- (a) physical likeness;
- (b) commercial likeness, including competition and distribution channels;
- (c) functional likeness, including end-use or substitutability;
- (d) similarities in production, including the method of production and inputs used;
- (e) other relevant characteristics.

Even the brief assessment of the distinguishing attributes between HVO and FAME in the SEF carried out by the TRA casts serious doubts whether the TRA's test for product likeness is satisfied:

- (a) Product (physical) likeness: The TRA determines that "[t]he difference in technical and chemical characteristics is not disputed. HVO is a hydrocarbon that has a close chemical composition to mineral diesel. HVO is a clear colourless liquid with no odour. FAME is a methyl ester which is a transparent liquid (colourless to yellow) with low odour."³² Further, "HVO has a higher cetane number, lower density at 15°C and lack of oxygen content (meaning it is less likely to oxidise). It has a lower average cold filter plugging point (CFPP), with HVO fuel standard EN 15940 specifying a CFPP of anywhere between -15°C and -34°C, although there can be CFPP overlap between HVO and FAME. CFPP is an important quality in fuel that determines the level of temperature variation the fuel can withstand before it freezes or gels. HVO has a minimum flashpoint of 61°C which means that it is safe in warmer conditions as well as freezing temperatures. HVO is a fungible fuel with diesel in a road-transport diesel engine on a technical basis."³³
- (b) Commercial likeness: The TRA acknowledges that "HVO operates under the fuel specification for EN 15940 while FAME operates under fuel specification EN 14214."³⁴
- (c) Functional likeness: The TRA acknowledges the lack of interchangeability beyond B7 blends at forecourt level and that "at higher blend rates, the interchangeability between FAME and HVO decreases"³⁵, and "in relation to various uses of HVO as a non-road transport fuel for rail, agriculture and

³⁰ SEF, paras. 115-117.

³¹ Available [here](#).

³² SEF, para. 88.

³³ SEF, para. 89.

³⁴ SEF, para. 90.

³⁵ SEF, para. 103.

maritime applications, as well as the use of HVO as a heating oil for off grid communities [...] HVO may not be interchangeable with FAME."³⁶ Further, "some HVO may be being sold at higher-blends or within performance-based road fuels"³⁷

- (d) Production: The TRA confirms wholly separate production processes of HVO and FAME: "The TRA has found that FAME and HVO have different production processes. FAME is produced through transesterification, whereby fatty acids react with an alcohol, often methanol, in the presence of a catalyst. HVO is produced hydrotreating fatty acids at high temperatures and pressure to remove oxygen. It is our understanding that the UK industry only produces biodiesel through transesterification at present, using waste-origin feedstock as the main raw material and fatty acid component."³⁸
- (e) Other relevant characteristics: The TRA confirms that "there are a number of distinct codes for each fuel type, FAME and HVO"³⁹

The TRA confirmed that the majority of exporters used commodity codes 2710194329 and 2710194339 for HVO imports,⁴⁰ and that "HVO can be declared under these codes and FAME cannot."⁴¹ [Confidential: commercially sensitive information]

The fact that most imports – as identified by the TRA – are declared under HVO-specific commodity codes, even where other commodity codes are technically available, confirms that HVO and FAME are not like products. The TRA provides no evidence that other commodity codes are used for HVO imports beyond negligible levels.

Furthermore, since 2025, new commodity codes (covering commodities within the 27101942 code) have been introduced that are specific to HVO and must be used for all HVO imports. The introduction of HVO-specific commodity codes in 2025 is a clear regulatory recognition that HVO and FAME are fundamentally different goods and should not be considered like products.

We believe that the above is sufficient to preclude determination that HVO and FAME "have characteristics closely resembling those of the goods in question."⁴² We also refer to DGD and VEL's previous submission, as well as the TRA's Business Survey,⁴³ for additional differences between HVO and FAME that were not included in the TRA's SEF assessment. Therefore, the TRA should conclude that HVO and FAME are not like products.

3.2 The TRA's price comparison is based on inaccurate data and assumptions

³⁶ SEF, para. 96.

³⁷ SEF, para. 117.

³⁸ SEF, para. 98.

³⁹ SEF, para. 101.

⁴⁰ SEF, para. 342.

⁴¹ SEF, para. 112.

⁴² As required by paragraph 7(1) of Schedule 4 of the UK Taxation (Cross-border Trade) Act 2018.

⁴³ AS0067 – Note to the Public File – Survey Responses – Subsidy, 18 September 2025, available [here](#).

The TRA considers that "the HVO import price to the UK is lower than the UK FAME sales price across the POI."⁴⁴ However, the TRA's assessment of the price relationship between HVO and FAME is deficient and inaccurate for several reasons.

(a) **Confusion between product scope and product likeness**

As explained further in Section 4 below, the TRA's assessment of FAME prices did not cover the key FAME commodity codes. This distorts the TRA's asserted price of UK FAME by not including a bulk of cheaper product. Therefore, the TRA's price comparison is not accurate.

The comparison in Table 14 of the SEF,⁴⁵ which the TRA relies upon to conclude that U.S. HVO is cheaper than UK FAME during the Injury Period, is flawed. It compares U.S. HVO import price distorted by FAME and mineral diesel classified under the in-scope commodity codes against only a fraction of UK FAME sales, omitting a significant portion of the market and thereby distorting the UK FAME sales price. This renders the comparison inaccurate, incomplete and unreliable.

Table 14: Import price per litre (all in-scope HMRC 10-digit commodity codes)				
	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
US Import price (£/l) Index	46	100	80	70
Average UK sales price (£/l) Indexed to the US, year 2	108	173	126	121
<i>Source: Questionnaire responses and HMRC raw customs declaration data</i>				

Table 14 (SEF, p. 73)

For an accurate comparison between the price of the goods concerned and the like products, the TRA should compare the commodity codes as identified in Table 2 in Section 4 below.

(b) **Temporal scope of price comparison**

The TRA's price comparison also fails to account for the relevant time period. The original measures on HVO were terminated on 10 November 2022.⁴⁶

The negligible U.S. HVO import volumes in 2021 and 2022 mean that these years do not provide a reliable basis for price assessment. Accordingly, the TRA cannot rely on 2021 and 2022 data for the purpose of the price comparison. These arguments are further elaborated in Section 5.

(c) **Lack of support from RTFO data**

The TRA's assertion that U.S. HVO was consistently cheaper than FAME from 2019–2023⁴⁷ is not supported by RTFO data. As shown in Image 2 of the SEF

⁴⁴ SEF, para. 113.

⁴⁵ SEF, page 73.

⁴⁶ TS0005 - Biodiesel from United States and Canada - Final determination (10 November 2022), available [here](#); TD0004 - Biodiesel from United States and Canada - Final determination (10 November 2022), available [here](#).

⁴⁷ SEF, para. 116.

(included below), increased HVO supply during these years had no discernible impact on FAME supply for RTFO, indicating that HVO and FAME were supplied to different commercial markets (HVO to high-blend, FAME to low-blend).

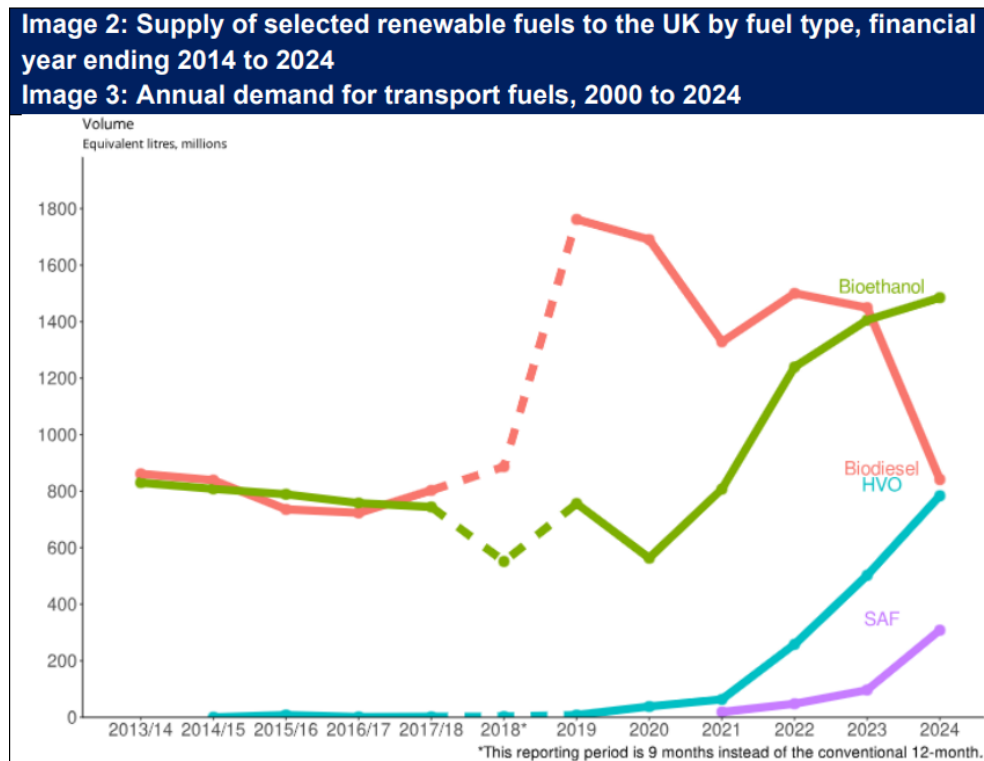


Image 2 (SEF, p. 26)

3.3 Increase in HVO supply under the RTFO does not imply use in B7 blends

The TRA asserts that “the majority of HVO and FAME is blended with mineral diesel up to B7 for sale at forecourts”⁴⁸, but provides no supporting data for this statement. DGD and VEL disagree with such assertion and request the TRA to provide the evidence on which it made such conclusion.

The TRA’s inference of the use of HVO in low blends (B7) based on RTFO data is flawed for the following reasons:

(a) **RTFO data cannot be used to infer blending patterns**

The RTFO is blind to end-use and does not require renewable fuel to be used in B7 blends, nor does it collect data on the blends used. An increase in HVO supply for RTFCs does not mean that HVO is being blended into B7. Therefore, the TRA cannot rely on RTFO data to infer HVO blending into B7.

(b) **No correlation between HVO and FAME supply**

RTFO supply data for 2021–2023 show no correlation between HVO and FAME supply. In these years, the increase in HVO supply did not impact FAME supply. Only in 2024, due to a global price crash and high price volatility of FAME and HVO,

⁴⁸ SEF, para. 91. See also: SEF, paras. 95, 117.

did HVO supply increase while FAME supply decreased. However, this does not support the conclusion that the majority of HVO was and continues to be blended into B7.

(c) **High-blend and performance markets absorb HVO supply**

Contrary to the TRA's assertion,⁴⁹ the UK's growing demand for high-blend and performance fuels is sufficient to absorb increased HVO imports without the need for B7 blending. A significant portion of HVO supply is used in higher-blend and performance-based markets, where FAME cannot be used. End-users such as fleet operators and public transport providers require HVO for its unique properties, which FAME cannot match. Examples include:

- (i) HVO100 pumps (truck stops/public sites)⁵⁰
- (ii) Branded higher-blend forecourt products (e.g., 25% renewable diesel)⁵¹
- (iii) Bulk fleet deliveries⁵²

(d) **RTFO does not indicate the country of production of supplied fuels**

RTFO data was incorrectly interpreted by the TRA to argue that U.S. HVO is used for B7 blends, because RTFO does not collect information about the country of production of the supplied fuel. Instead, only the country of origin of feedstocks used is reported.

4. **PRODUCT LIKENESS AND PRODUCT SCOPE ARE NOT BEING CORRECTLY ASSESSED**

Without any prejudice to DGD and VEL's position that HVO and FAME are not like products, the TRA's assessment confuses and conflates two key concepts:

- (a) Product scope, which relates to the goods concerned in case AS0067 ("**Goods Concerned**"): HVO; and
- (b) Product likeness, which relates to like products, i.e., non-U.S. goods equivalent to the Goods Concerned ("**Like Products**"): HVO and FAME.

According to the Notice of Initiation and the SEF, the Goods Concerned cover HVO from the U.S., and are defined as follows:

"The goods subject to investigation (the Goods Concerned) are:

Biodiesel (or paraffinic diesel fuel / gasoil) obtained from synthesis or hydrotreatment of oils and fats of non-fossil origin, in pure form or as included in a blend, originating in the United States of America (US). This biodiesel is commonly known as hydrotreated (hydrogenated) vegetable oil diesel (HVO), renewable diesel or green diesel. Synthetic paraffinic kerosene (also known as sustainable aviation fuel (SAF)) is excluded from this description of biodiesel.

The Goods Concerned are subject to the following commodity codes:

⁴⁹ SEF, para. 117.

⁵⁰ See e.g.: <https://www.as24.com/en/as-24-enables-hvo100-refuelling-uk>

⁵¹ See e.g.: <https://www.esso.co.uk/en-gb/hvo-faqs>

⁵² See e.g.: https://www.bp.com/en_gb/united-kingdom/home/products-and-services/bp-fleet/bp-bioenergy-hvo.html

1516209821	1518009923	2710194429	2710194810	2710201699
1516209823	1518009929	2710194432	2710194890	3824999210
1516209829	1518009932	2710194439	2710201121	3824999213
1516209832	1518009939	2710194621	2710201123	3824999214
1516209839	2710194221	2710194629	2710201129	3824999216
1518009121	2710194223	2710194623	2710201132	3824999219
1518009123	2710194229	2710194632	2710201139	3826009011
1518009129	2710194321	2710194639	2710201621	3826009019
1518009132	2710194329	2710194721	2710201623	3826009039 ⁵³
1518009139	2710194339	2710194723	2710201629	
1518009511	2710194390	2710194729	2710201632	
1518009519	2710194421	2710194732	2710201639	
1518009921	2710194423	2710194739	2710201692	

The Notice of Initiation and the SEF identify the following as Like Products for the purposes of AS0067:

"Fatty-acid mono-alkylesters (FAME) from non-fossil origin, in pure form or as included in a blend, excluding sustainable aviation fuel,

and

Biodiesel (or paraffinic diesel fuel / gasoil) obtained from synthesis or hydrotreatment of oils and fats of non-fossil origin, in pure form or as included in a blend, originating in the UK or Rest of World (RoW). This biodiesel is commonly known as hydrotreated (hydrogenated) vegetable oil diesel (HVO), renewable diesel or green diesel. Synthetic paraffinic kerosene (also known as sustainable aviation fuel (SAF)) is excluded from this description of biodiesel."⁵⁴

Article 15.1 of the SCM Agreement requires that the authorities carry out an objective examination based on positive evidence concerning the like products and impact on the domestic producers of like products:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products."

In *US – Hot-Rolled Steel*, the WTO Appellate Body interpreted the "objective examination" requirement to require that an investigation is carried out in good faith and in a fair and unbiased manner:

"The word 'objective', which qualifies the word 'examination', indicates essentially that the 'examination' process must conform to the dictates of the basic principles of good faith and fundamental fairness. In short, an 'objective examination' requires that the domestic industry, and the effects of dumped imports, be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation. The duty of the investigating authorities to

⁵³ AS0067 - Notice of Initiation.

⁵⁴ AS0067 - Notice of Initiation.

*conduct an 'objective examination' recognizes that the determination will be influenced by the objectivity, or any lack thereof, of the investigative process.*⁵⁵

The scope of the Goods Concerned is limited to HVO, and the in-scope commodity codes do not include FAME. At the same time, the TRA identifies FAME as a Like Product and includes FAME in the description of the Like Product but it does not include the commodity codes that cover FAME and relies only on HVO commodity codes identified as Goods Concerned. This is despite a much broader scope of the Like Products (HVO and FAME) than the Goods Concerned (HVO).

As a consequence, the TRA's assessment of FAME data unjustifiably does not include the following six 10-digit commodity codes, under which most FAME is classified:

- 3826001020
- 3826001029
- 3826001050
- 3826001059
- 3826001089
- 3826001099

According to HMRC data, in 2024 around 690m kgs of products were imported into the UK under 8-digit commodity code 38260010.⁵⁶ By comparison, in the same period, less than 115m kg of the AS0067 in-scope commodity codes from chapter 38 (38249992 and 38260090) were imported into the UK.⁵⁷

Notably, these six 10-digit commodity codes were included in the recently concluded AD0058 investigation against biodiesel from China which covered imports of both HVO and FAME from China. Therefore, the TRA has recently recognised that these commodity codes are relevant for the classification of FAME.

These commodity codes are defined as follows:

Table 1

Section VI	Products of the chemical or allied industries
Chapter 38	Miscellaneous chemical products
3826	Biodiesel and mixtures thereof, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals
3826 0010	Fatty-acid mono-alkyl esters, containing by weight 96,5 % or more of esters (famae)
3826 0010 20	Mixture of fatty acid methyl esters containing by weight at least: - 65% or more but not more than 75% of c12 fame,

⁵⁵ Appellate Body Report, US – Hot-Rolled Steel, para. 193.

⁵⁶ <https://www.uktradeinfo.com/trade-data/ots-custom-table/?id=20e12395-7cf7-42d0-8bc5-8307302122fb>

⁵⁷ <https://www.uktradeinfo.com/trade-data/ots-custom-table/?id=74571ea4-77a5-49f7-96a1-b2ac13963046>

	- 21% or more but not more than 28% of c14 fame, - 4% or more but not more than 8% of c16 fame, for use in the manufacture of detergents and home and personal care products
3826 0010 20	Consigned from Canada
3826 0010 29	Other
3826 0010 50	Mixture of fatty acid methyl esters containing by weight at least: - 50% or more but not more than 58% of c8-fame - 35% or more but not more than 50% of c10-fame for the manufacturing of high purity c8 or c10 fatty acid or fatty acid mixtures thereof or of high purity methylester of c8 or c10 fatty acid
3826 0010 50	Consigned from Canada
3826 0010 59	Other
3826 0010 89	Fatty-acid mono-alkyl esters, containing by weight 96,5 % or more of esters (famae) – Other
3826 0010 89	Consigned from Canada
3826 0010 99	Other

The TRA's fundamental misunderstanding of the commodity codes in scope of the Like Products renders the assessment on Like Products asymmetric, inaccurate and arbitrary.

As set out by the WTO Panel in *China – Autos*, "[a] failure to ensure price comparability is inconsistent with the requirement under Articles 3.1 and 15.1 that a determination of injury be based on positive evidence and involve an objective examination of, inter alia, the effect of subject imports on the prices of domestic like products."⁵⁸

There are only two ways forward that would bring the TRA's SEF assessment in line with the UK Regulations and the WTO SCM Agreement:

- (i) The TRA determines that HVO and FAME are not Like Products. This would allow the TRA to use the commodity codes of the Goods Concerned as covering also the Like Products. This would require the TRA to terminate AS0067 investigation given that there are no UK HVO producers; or
- (ii) Should the TRA determine that HVO and FAME are Like Products, the TRA would need to include the FAME commodity codes for the Like Products: 3826001020, 3826001029, 3826001050, 3826001059, 3826001089,

⁵⁸ WTO Panel Report, *China – Autos*, para. 7.256.

3826001099. This would require the TRA to take into account the data for imports under these commodity codes in Section D: The goods concerned and the like goods; Section E: The UK industry and market; Section G: Injury; and Section I: Economic Interest Test).

Should the TRA proceed with the option set out in point (ii), any comparison of the Goods Concerned with the Like Products should be based on the classification set out in Table 2 below. It is the only combination that allows for a fair and legally compliant comparison under UK and WTO law.

Table 2

Product	2024 commodity codes for fair comparison of the Goods Concerned against the Like Products	Comments
Goods Concerned (HVO)	2710194329, 2710194339	<ul style="list-style-type: none"> • Only commodity codes 2710194329 and 2710194339 should be used to represent HVO imports. These commodity codes are specific to HVO and cannot be used for FAME imports, as acknowledged by the TRA.⁵⁹ • The TRA determined that the majority of HVO imports from the U.S. from the sampled exporters (which accounted for about 98% of U.S. HVO imports)⁶⁰ were classified under these two commodity codes.⁶¹ • The remaining in-scope AS0067 commodity codes generally cover the following categories goods (colour-coded in the row below): <ul style="list-style-type: none"> ▪ Feedstock: in-scope headings 1516 and 1518. ▪ Majority petroleum oil blends: the majority of in-scope headings 2710. ▪ FAME: in-scope headings 3824 and 3836. • Using data for all in-scope products for AS0067 would result in inaccurate findings. The TRA has on several occasions in the SEF mentioned that data using all-in scope commodity codes is distorted, inflated and non-representative due to other products

⁵⁹ SEF, para. 112.

⁶⁰ AD0068, Notification of termination, para. 75.

⁶¹ SEF, para. 336.

			<p>classified under these commodity codes, including mineral diesel.⁶²</p> <ul style="list-style-type: none"> Therefore, using these two commodity codes for Goods Concerned ensures that (i) the data is not distorted by mineral diesel and FAME; and (ii) represents the overwhelming majority of U.S. HVO imports.
<p>Like Products (HVO and FAME)</p>	<p>1516209821, 1516209829, 1516209839, 1518009123, 1518009132, 1518009511, 1518009921, 1518009929, 1518009939, 2710194223, 2710194321, 2710194339, 2710194421, 2710194429, 2710194439, 2710194623, 2710194632, 2710194721, 2710194729, 2710194739, 2710194890, 2710201123, 2710201132, 2710201621, 2710201629, 2710201639, 2710201699, 3824999213, 3824999216, 3826001020, 3826001050, 3826001089, 3826009011, 3826009039</p>	<p>1516209823, 1516209832, 1518009121, 1518009129, 1518009139, 1518009519, 1518009923, 1518009932, 2710194221, 2710194229, 2710194329, 2710194390, 2710194423, 2710194432, 2710194621, 2710194629, 2710194639, 2710194723, 2710194732, 2710194810, 2710201121, 2710201129, 2710201139, 2710201623, 2710201632, 2710201692, 3824999210, 3824999214, 3824999219, 3826001029, 3826001059, 3826001099, 3826009019,</p>	<ul style="list-style-type: none"> The comparison should include a full list of commodity codes covering the Like Products – FAME and HVO. The scope of Like Products is broader than the product scope for AS0067, which covers only HVO. The missing commodity codes are marked in red. [Confidential: commercially sensitive information] These commodity codes include additional FAME-specific commodity codes. Inclusion of these commodity codes is necessary to appropriately reflect data related to the Like Products. The commodity codes marked in red were used in AD0058, in which goods concerned were defined as HVO and FAME, confirming that these commodity codes cover the Like Products.

In addition, the definition of the UK industry encompasses “all the producers in the UK of like goods, or those of them whose collective output of like goods constitutes a major proportion of the total production of those goods in the UK.”⁶³

The TRA's assessment of Like Products should reflect the full range of commodity codes that cover both FAME and HVO.

⁶² SEF, paras. 336, 346, 355, 361, 464.

⁶³ Paragraph 6 of Schedule 4 to the Taxation (Cross-border Trade) Act 2018.

Accordingly, it is necessary that the TRA corrects its analysis and provides revised data that includes volumes and values for all Like Products to provide an accurate and fair representation of the UK industry and to comply with the requirements of the UK Trade Remedies Regulations and WTO law.

5. INJURY

DGD and VEL submit that the TRA's injury assessment in the SEF is flawed because:

- The TRA's assessment is based on inadequate data that does not represent Like Products.
- PCN comparison and adjustments made by the TRA are unfair.
- Existing anti-dumping and anti-subsidy measures against U.S. HVO within the injury period affect its representativeness.
- The increase in volume of U.S. HVO imports is misrepresented due to the existing anti-dumping and anti-subsidy measures against U.S. HVO.
- The assessment of the effects of U.S. HVO imports on prices and on the UK FAME industry is based on incomplete data.

5.1 Inadequate data representing Like Products

As explained in Section 4 above, the TRA's assessment whether U.S. HVO imports caused injury to the UK FAME industry is based on incomplete data because it does not account for the key FAME commodity codes, thereby omitting a significant portion of Like Products from the analysis.

Should the TRA determine that HVO and FAME are like products, the (non-distorted) U.S. HVO price must be compared with the UK sales price of *all* Like Products. We request that the SEF Injury assessment in Section G1 be revised to include sales data for these commodity codes. Excluding them undermines the fairness of the investigation and contravenes the UK Trade Remedies Regulations and WTO law.

Any comparison between the Goods Concerned and the Like Products made for the purpose of injury assessment should be carried out on the basis of the commodity codes as set out in Table 2 above.

5.2 Effect of U.S. HVO imports on prices

Under regulation 32 of UK Regulations, the TRA must assess whether HVO imports have caused significant price undercutting, depression, or suppression of UK FAME prices.

(a) PCN comparison

Since there is no domestic HVO production, the TRA's artificial construction of UK HVO PCN by comparing U.S. R100 HVO and U.S. B100 FAME prices using Argus data, then applying the price difference to UK FAME prices⁶⁴ is flawed for several reasons.

(i) Fundamental product differences preclude fair comparison

⁶⁴ SEF paras. 128-131.

HVO and FAME are separate products. The TRA has acknowledged that they have different physical, commercial and functional (in particular, for higher HVO blends) characteristics. The TRA also confirmed that they have different production processes.⁶⁵

The PCN table distinguishes between HVO (marked by letter "P") and FAME (marked by letter "F"). This distinction is necessary to account for the differences between the products, as acknowledged by the TRA.

The differences between HVO and FAME go to the core of their market position, end-use, and characteristics. As such, it is not possible to quantify these fundamental product differences to allow a fair comparison HVO and FAME as the same products.

By constructing a code for UK HVO, the TRA assesses price effects against a purely hypothetical product. A price of a non-existent good cannot be undercut, depressed or suppressed, as such product does not exist and cannot be used to determine the price effects of U.S. HVO imports.

(ii) **HVO and FAME price difference in the U.S. and the UK is not comparable**

Without prejudice to our position that there is no fair and reasonable way to assess the price effects of U.S. HVO on a non-existent UK product, the manner in which the TRA carried out the PCN comparison in the SEF is based on misrepresented premises.

The U.S. and UK markets differ significantly in blending mandates, supply and demand, logistics, and competition. HVO and FAME price differences in the U.S. cannot be assumed to reflect product characteristics in the UK. Therefore, the price difference between U.S. HVO and FAME cannot be used to determine the HVO price in the UK. [Confidential: commercially sensitive information]

HVO and FAME prices in different jurisdictions are independent from each other as they operate under different low carbon market regulations and feedstock eligibility. As such, HVO and FAME sold in the U.S. are different from HVO and FAME sold in other jurisdictions. [Confidential: data available under subscription]

The TRA has not explained whether its adjustment was based on POI/annual/monthly averages of Argus prices, which is critical given price volatility.

(iii) **BTC distorts Argus prices**

The BTC distorts prices, even if the TRA asserts that R100 HVO is not affected by subsidies.⁶⁶ [Confidential: commercially sensitive information]

⁶⁵ See Section 3 above.

⁶⁶ SEF, para. 132.

(b) **Injury Period is not representative because it includes years 2021 and 2022**

Two out of the four years of the Injury Period (2021-2022) are not representative and cannot be used to assess whether U.S. HVO imports caused injury to the UK FAME industry due to negligible U.S. HVO imports to the UK.

The injury period must be reassessed in light of the termination of anti-dumping and anti-subsidy measures on U.S. HVO on 10 November 2022. Until then, U.S. HVO imports were subject to anti-dumping duties between GBP 57.41 and GBP 144.11 per tonne net, and countervailing duties between GBP 176.75 and GBP 198.34 per tonne net,⁶⁷ resulting in negligible import volumes in 2021 and most of 2022.

Although the anti-dumping and anti-subsidy measures were retroactively removed with effect from 30 January 2021,⁶⁸ only after 10 November 2022 U.S. HVO has been subject to zero tariffs. Therefore, the anti-dumping and countervailing duties on U.S. HVO must be considered to have been lifted only on 10 November 2022 and not on 30 January 2021.

According to the TRA's imports volume data, U.S. HVO imports in 2021 were negligible (below 500 litres) and U.S. HVO imports in 2022 were approximately just 2.5% of 2024 levels:⁶⁹

- (i) In 2021, UK HVO consumption was 63m litres (all sources), compared to 1,314m litres of FAME. 2021 U.S. HVO imports were too low for the TRA to consider.⁷⁰ [Confidential: commercially sensitive information]
- (ii) In 2022, UK HVO consumption was 262m litres (only 11m litres from the U.S.),⁷¹ compared to 1,501m litres of FAME. U.S. HVO accounted for just 0.6% of total FAME and HVO consumption. [Confidential: commercially sensitive information]

	Year one	Year two	Year three	POI
	2021	2022	2023	2024
UK Consumption Biodiesel (incl HVO & FAME) Total Litres	1,394,324,370	1,763,412,196	1,958,872,714	1,630,732,146
UK Consumption Biodiesel (incl HVO & FAME) Indexed to year 2	79	100	111	92
UK Consumption of HVO total litres	63,053,160	262,536,870	505,896,064	787,829,538
UK Consumption of HVO Indexed to year 2	24	100	193	300
UK production (FAME) Indexed to year 2	105	100	97	79

Source: RTFO consumption data, Confidential UK questionnaire data

Table 3 (SEF, p. 35)

⁶⁷ TD0004 – Final Recommendation, Annex 1; TS0005 – Final Recommendation, Annex 1.
⁶⁸ TD0004 – Final Recommendation, para. 488; TS0005 – Final Recommendation, para. 475.
⁶⁹ SEF, Table 11.
⁷⁰ SEF, paras. 344, 463.
⁷¹ SEF, para. 374.

Given these negligible volumes, imports in 2021 and 2022 could not have had any material effect on UK FAME prices or caused injury to the UK FAME industry. The TRA should therefore limit its injury assessment to 2023 and 2024, when U.S. HVO imports increased both nominally and in relation to HVO and FAME supplied to the UK.⁷²

(c) **Price undercutting**

Without prejudice to our comments on the unfair price comparison above, the TRA's SEF assessment does not satisfy the requirements for significant price undercutting required under regulation 32 of the UK Regulations.

For the reasons explained in Section 3 above, a fair assessment requires that the TRA assesses the least distorted data possible. As such, the TRA should disregard Table 13, which includes data for all in-scope commodity codes, and consider only Table 13.1, which covers only – and the vast majority of – HVO imports.

The data presented in Table 13.1 shows no undercutting in 2023 (where U.S. HVO prices were 9% above UK prices) and undercutting of 21% in 2024. Data for 2021 and 2022 should be excluded because it was not representative given the low volume of U.S. imports.

Table 13.1: Undercutting over the injury period (HMRC 10-digit commodity codes 2710194329 and 2710194339)				
	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
Undercutting margin	-	31%	-9%	21%
<i>Source: Questionnaire responses and HMRC raw customs declaration data</i>				

Table 13.1 (SEF, p. 72)

Should the TRA disagree that years 2021 and 2022 are not representative, we ask that the undercutting margin is provided also for year 2021.

(d) **Price depression**

The deficiencies of the TRA's price depression assessment were set out in Section 3 above. As such, neither Table 14 or Table 14.1 can be understood to present accurate data about the price of the Goods Concerned and the Like Products. For an accurate comparison the TRA should compare the commodity codes as identified in Table 2 above.

Without prejudice to these comments, according to Table 14.1 (which should be considered more reliable than Table 14 given no FAME or diesel distorting the HVO data covered), there was no price depression in 2023. Prices of U.S. HVO imports were 9 points higher than UK FAME sales prices. The price depression observed in 2024 was due to a global price crash affecting both HVO and FAME, not specifically attributable to U.S. HVO imports. As the TRA recognised, both HVO and FAME prices were, on average, the lowest from the injury period.⁷³

⁷² In 2023, 200m litres of HVO were imported into the UK from the U.S. (SEF, para. 374). Table 11 (SEF, page 67) indicates that approximately 431m litres of HVO were imported from the U.S. into the UK in 2024.

⁷³ SEF, para. 375.

The TRA itself recognised that the price depression was insufficient to be considered significant.⁷⁴

Table 14.1: Import price (HMRC 10-digit commodity codes 2710194329 and 2710194339)				
	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
US import price (£/l) Index	*	100	116	72
Average UK sales price (£/l) Index	91	146	107	102

Source: Questionnaire responses and HMRC raw customs declaration data

Table 14.1 (SEF, p. 74)

(e) **Price suppression**

Without prejudice to our comments on the unfair price comparison, the TRA's SEF assessment does not satisfy the requirements for price suppression.

- (i) First, it is unclear how the TRA has calculated the average UK cost of production of UK HVO (which is not produced in the UK). As the TRA acknowledges, the production process of HVO and FAME is different, and therefore it entails different costs. We request the TRA to provide details of the calculation methodology.
- (ii) Second, there is no evidence in Table 15 of price suppression during the injury period. In 2023 and 2024, UK sales prices remained above the cost of production, despite lower U.S. sales prices. This indicates that U.S. imports did not suppress UK prices to a significant degree, despite the TRA's assertion otherwise.⁷⁵

Table 15: Price suppression (UK and US sales prices indexed to Year 2 of UK costs of production)				
	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
Average UK cost of production (£/l) Indexed	80	100	71	67
Average UK sales price (£/l) Indexed	61	98	72	69
Average US sales price (£/l) Indexed	26	57	45	40

Source: Questionnaire responses and HMRC raw customs declaration data
Note: Average costs of production is made up of average annual costs of production and average annual output value. We consider this to be a reasonable reflection of UK industry costs of production over the injury period, as differences between costs of production and output value are negligible.

Table 15 (SEF, p. 75)

⁷⁴ SEF, para. 394.

⁷⁵ SEF, para. 391.

5.3 Volume of U.S. HVO imports

The TRA notes an increase in U.S. HVO imports between 2021 and 2024, from about 500 litres in 2021 to 200m litres in 2023⁷⁶. However, this increase is misrepresented because prior up to November 2022, there were anti-dumping and countervailing duties on U.S. imports of HVO and FAME which priced out U.S. imports from the UK market. The increase in 2023 and 2024 cannot be interpreted as injurious.

6. CAUSATION AND NON-ATTRIBUTION

The TRA's causality assessment is fundamentally flawed due to the incorrect and asymmetrical scope of products assessed and the use of incomplete data, as explained in Section 4 above.

6.1 Incomplete data and product scope

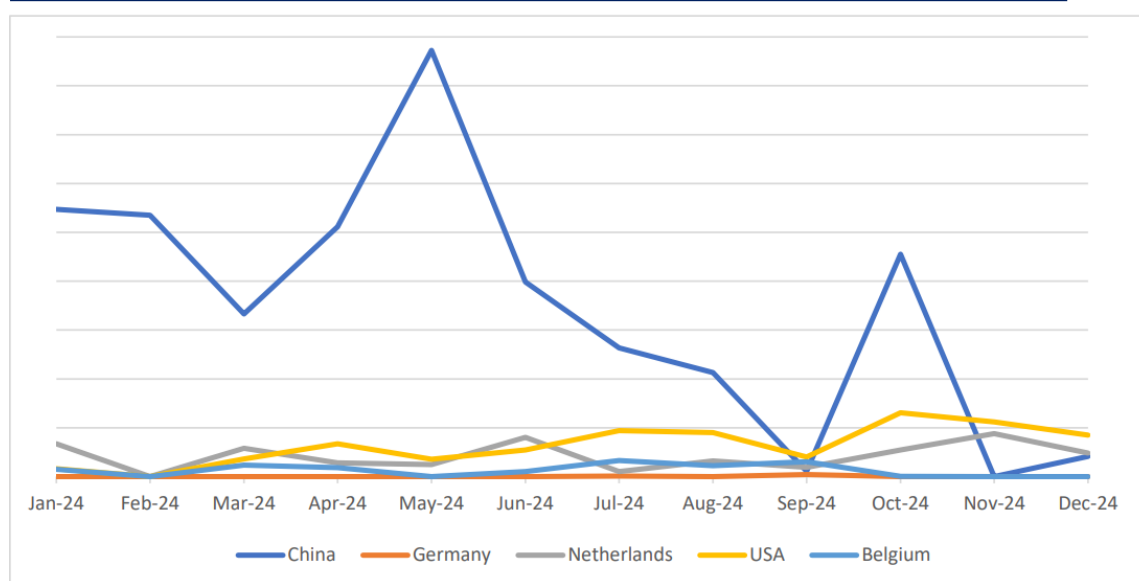
The TRA's causality analysis is based on an incomplete dataset. Tables 26, 26.1, 27, and 27.1 (reproduced below) do not accurately represent imports of all Like Products.

A complete and symmetrical causality assessment requires that imports of all Like Products, as set out in Table 2 above, are considered. In other words, the TRA should compare U.S. HVO imports against all HVO and FAME imports from third-countries.

6.2 Inconsistencies in SEF import data

The TRA's assertion that the U.S. became the single largest exporter of HVO to the UK in November 2024 is incorrect as revealed in Image 5 included below. China exported significantly more HVO than any other country for 10 out of 12 months in 2024, with monthly volumes up to 20 times higher than the next largest exporter. U.S. imports only exceeded Chinese imports for two months, after a significant drop in Chinese exports.

Image 5: Top HVO Importers



⁷⁶ SEF, paras. 372, 374.

Image 5 (SEF, p. 85)

Table 26: Top four third country imports (litres) and the US (all in-scope HMRC 10-digit commodity codes)				
Country of origin (Indexed to US year 2)	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
US	47	100	252	345
PRC	109	186	264	171
Netherlands	42	33	33	32
Belgium	6	9	9	6
Malaysia	5	13	10	11

Source: HMRC raw customs declaration data

Table 26 (SEF, p. 86)

Table 26.1: Top three third country imports (litres) (HMRC 10-digit commodity codes 2710194329 and 2710194339)				
Country of Origin (Indexed to US year 2)	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
US	*	100	1,821	3,934
China	11,991	14,046	*	*
Netherlands	300	1,192	3,260	1,651
Belgium	*	490	457	*

Source: HMRC raw customs declaration data

Table 26.1 (SEF, p. 87)

However, Tables 26 and 26.1 indicate that the U.S. imported more HVO than China over the same period. We request that the TRA clarify these discrepancies.

Furthermore, in Table 27 of the Final Determination of AD0058⁷⁷ (which cover the injury period from April 2020 to March 2024), the U.S. was not listed among the top importers.

Table 27: Import volumes of biodiesel by country (as a % of total countries) (indexed to PRC in year 1), April 2020 to March 2024				
	Year one	Year two	Year three	POI
PRC	100	189	208	225
European Union	178	75	53	33
Malaysia	0	12	11	8
All other countries	0	0	7	11

Source: Confidential HMRC raw customs declaration data

Table 27 (AD0058, Final Determination, p. 114)

Similarly, Table 28 does not mention the U.S. among the top seven exporting countries. This further calls into question the accuracy of the TRA's data and conclusions.

⁷⁷ AD0058 - Biodiesel from China – Final Determination, available [here](#).

Table 28: Average price per metric tonne for the top exporting countries, April 2020 to March 2024				
Country	Year one	Year two	Year three	POI
Belgium (Indexed)	100	73	179	91
PRC (Indexed)	100	78	116	88
France (Indexed)	100	117	94	117
Germany (Indexed)	100	109	160	129
Malaysia (Indexed)	-	-	-	-
Netherlands (Indexed)	100	113	215	132
Spain (Indexed)	100	147	203	142

Source: Confidential HMRC raw customs declaration data

Table 28 (AD0058, Final Determination, p. 114)

6.3 Conclusion: Flawed attribution of injury to U.S. imports

The TRA's conclusion that injury is attributable to U.S. imports is based on two main elements:

- (a) Evidence of increasing volume and low prices of U.S. imports; and
- (b) Limited market share gained by the UK industry after a decrease in Chinese imports.⁷⁸

Further, the TRA also relies on comments from the UK industry,⁷⁹ that U.S. HVO imports are a cause of injury which are not substantiated by evidence and do not provide additional value to the causality assessment.

The market share calculations in section G1.3 are inaccurate because the TRA did not assess the market share for all Like Products, but only within the limited scope of the Goods Concerned. A proper assessment must consider the market size and share for all like goods, not just those within the investigation's product scope. The determination that the UK FAME industry gained only limited market share after the decrease in Chinese imports is not substantiated. [Confidential: commercially sensitive information]

7. ECONOMIC INTEREST TEST

The TRA conclusions on the wider economic interest of the UK ("EIT") that allegedly justify the imposition of countervailing measures is unsupported by the facts of the investigation.

7.1 Inadequacy of the underlying injury assessment

As set out in previous sections, VEL and DGD contest both the subsidy findings which are not supported by the SCM Agreement as well as the injury assessment which is flawed and based on incomplete and inaccurate data, respectively. The TRA has failed to demonstrate that the UK HVO industry was injured by alleged subsidized imports of U.S. HVO.

⁷⁸ SEF, para. 471.

⁷⁹ SEF, para. 470.

7.2 Economic significance and market structure

There appears to be no affected industry. Firstly, there is no HVO production in the UK. Secondly, HVO and FAME are not like products. Thirdly, the UK relies exclusively on imports of HVO. It follows that there is not as such an affected industry and consumers.

The TRA has recognised distinct segments for higher-blend and lower-blend users of HVO. The TRA's analysis of 30 downstream businesses found that 19 were lower-blend users and 11 were higher-blend users, with higher-blend users typically operating on low profit margins. The TRA concluded that UK producers have lower economic significance than other parts of the biodiesel supply chain, and that importers and downstream users have greater significance.⁸⁰

7.3 Impact of the measures

The TRA's welfare analysis indicates that the proposed measures could result in a substantial net welfare loss, significantly higher than in the vast majority of the TRA's previous investigations. The estimated annual welfare loss could be as high as GBP 354.22m, with potential gains as low as GBP 7.79m, meaning the losses could be up to 45 times greater than the gains. Even in less extreme scenarios, the welfare loss is estimated to be 7.5 to 13.5 times higher than any gain.

The scenarios considered by the TRA are hypothetical and do not take into account the absence of UK HVO production, nor the likelihood that such production will not be established in the foreseeable future.

The TRA identifies scenario A2c⁸¹ as the most likely outcome. However, this scenario is unrealistic for several reasons:

- (a) The TRA's determination that two-thirds of HVO are used for low-blends and one-third for higher blends is arbitrary, as unsupported by evidence.
- (b) Given the minimal blending of HVO into B7 under normal pricing conditions, the UK FAME industry would not be able to capture the market share left behind by U.S. HVO. Therefore, scenario A2b appears to be more realistic in this respect.
- (c) Measures against U.S. HVO will inevitably result in trade diversion, due to the lack of UK HVO production.
- (d) The scenario assumes that assumes UK producers could raise prices to match third-country suppliers, which is not supported by the data (e.g., imports from Belgium and China were priced lower than those from the U.S. during the POI, as shown in Table 27).

⁸⁰ SEF, para. 557.

⁸¹ SEF, para. 573: "*Scenario A2c: All US suppliers leave the market; UK producers raise their prices to the average for third country suppliers. Exiting US suppliers' sales to lower-blends are allocated proportionally to UK producers and third country suppliers; whilst sales to higher-blends are allocated to third country suppliers.*"

Table 27: Top four third country imports (£/l) (all in-scope HMRC 10-digit commodity codes)				
Country of Origin (Indexed to the US, year 2)	Year one (2021)	Year two (2022)	Year three (2023)	POI (2024)
US (£/l)	46	100	80	70
China (£/l)	67	100	84	69
Netherlands (£/l)	75	170	113	87
Belgium (£/l)	75	130	114	67
Malaysia (£/l)	92	73	98	122
<i>Source: HMRC raw customs declaration data</i>				

Table 27 (SEF, p. 88)

The measures would increase costs for all diesel users and for consumers of goods and services where biodiesel is used as an input. The TRA found that the impact would be particularly acute for low-income households⁸² and for environmentally conscious consumers,⁸³ directly undermining the UK government’s environmental and cost-of-living objectives.

The TRA estimates that B7 diesel prices could rise by 0.35% to 1.02%, and that a 5% increase in fuel prices could reduce UK GDP by 0.11%.⁸⁴ Even a 1% increase in fuel prices could reduce GDP by about 0.01%. Higher fuel costs would reduce profit margins, increase prices for goods and services, and lower disposable income.

Finally, the scenarios considered by the TRA do not account for the U.S. robust stance on trade deficits and a willingness to impose retaliatory measures. Implementing countervailing duties on U.S. HVO so soon after the conclusion of the landmark U.S.-UK trade agreement – the first such deal following the U.S. “Liberation Day” tariffs – would risk escalation trade frictions at a time when both governments are working to strengthen economic ties. A key element of the U.S.-UK trade agreement was the liberalization of trade on bioethanol; it would appear in bad faith for the UK to now look to impose measures on U.S. second generation biodiesel. Therefore, the impact of possible trade measures adopted in response to countervailing duties on U.S. HVO, in particular given the deficiencies of the TRA’s assessment set out above, should be taken into account when calculating impact of the measures on UK economy.

7.4 Impact on competitive environment and the structure of UK markets

The exit of U.S. suppliers would result in “acute impacts” for higher-blend biodiesel users,⁸⁵ with the cost of higher blends expected to rise disproportionately.⁸⁶ This could limit the ability of these users to purchase higher blends, undermining the UK’s environmental goals and the competitiveness of UK industry.

The TRA’s finding that the ability of suppliers to compete would not be affected⁸⁷ is unsupported by evidence. The removal of U.S. suppliers would increase UK reliance on EU suppliers, particularly Neste, raising concerns about market concentration and supply security. The risks of overreliance on a single supplier were made clear in late 2024, when

⁸² SEF, para. 593.
⁸³ SEF, para. 594.
⁸⁴ SEF, para. 581.
⁸⁵ SEF, para. 598.
⁸⁶ SEF, para. 599.
⁸⁷ SEF, para. 600.

a sharp spike in HVO prices occurred following reduced availability caused by a production suspension due to a fire at a Neste's plant as illustrated by the graph below. [Confidential: data available under subscription]

7.5 RTFO targets

The TRA does not adequately consider that HVO in higher blends is crucial for meeting RTFO obligations, and that FAME is not a viable substitute in these applications due to technical and regulatory constraints. The loss of access to competitively priced HVO would hinder the UK's ability to meet its environmental targets.

7.6 Consideration of alternative forms of measure

The TRA guidance provides that, where no form of measure would meet the EIT, the preferred recommendation should be that no measure is implemented.⁸⁸

The TRA determined that "the EIT assessment has highlighted that the measure could lead to substantial acute costs to higher- and the highest-blend users of biodiesel. We have therefore considered whether adjusting the scope of the measure could reduce the negative impacts on these users."⁸⁹

The TRA considered two alternative options to mitigate the negative impacts. The consideration of the alternative form of measures to address the substantial UK welfare loss implies that the measures in their planned form fail to meet the EIT. The TRA was unable to propose a form of measure that would meet the EIT. Therefore, the TRA's recommendation – in light of its guidance – should be that the EIT is not met and AS0067 should be terminated without the imposition of anti-subsidy measures.

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⁸⁸ <https://www.gov.uk/guidance/trade-remedies-investigations-directorate-trid-dumping-and-subsidisation-investigations-guidance/economic-interest-test>

⁸⁹ SEF, para. 605.