

**COMMENTS BY THE UNITED STATES GOVERNMENT ON
THE JUNE 9, 2026 NOTE TO PUBLIC FILE**

Investigation No. AS0067

NON-CONFIDENTIAL

I. INTRODUCTION

1. The United States welcomes the opportunity to provide comments on the Trade Remedies Authority's (TRA) June 9, 2026 note issued in the anti-subsidy investigation of alleged subsidization of hydrotreated vegetable oil diesel (HVO) from the United States. The comments concern the TRA's finding that the Clean Fuel Production Credit (CFPC) is a replacement program for the Blender's Tax Credit (BTC). As addressed below, the June 9 note erred in reversing the TRA's previous conclusion that the BTC provides no present subsidization to U.S. HVO exporters. The United States respectfully requests that the TRA reconsider and further evaluate its findings on alleged subsidization and injury, and as a result, promptly terminate the anti-subsidy investigation. If the TRA does not, then it should continue to find that imposing countervailing duties on U.S. HVO imports would not be in the UK economic interest

II. SUBSIDY ANALYSIS

2. On March 12, 2026, the TRA correctly determined that "the BTC no longer offers present subsidization to US HVO exporters."¹ The TRA reversed that determination in its June 9, 2026, note to the public file, treating a different, later program, CFPC, as a replacement program. For the reasons set forth below, the CFPC is a different program that does not provide a basis to conclude that the terminated BTC provides present subsidization.

A. Blender's Tax Credit

3. First, the BTC expired on December 31, 2024, and thus no longer provides benefits to producers of HVO.² The TRA has acknowledged this fact.³ Because the BTC program was withdrawn and is not in effect, given the prospective nature of the United Kingdom's trade remedy system, the program provides no basis to impose a countervailing duty.⁴

¹ Note to the public file (March 12, 2026), p. 2.

² *See, e.g.*, U.S. Government Questionnaire Response, p. 28.

³ *See* Statement of Essential Facts, para. 171; Note to public file (March 12, 2026), p. 2; Note to public file (June 9, 2026), p. 6.

⁴ *See, e.g.*, SCM Agreement, Article 19.1.

4. Accordingly, this investigation should be terminated. To the extent that the TRA determined to impose a countervailing duty based on its finding that CFPC is a replacement program, this determination was erroneous for the reasons described below.

B. Clean Fuel Production Credit

5. Even though the BTC has ended, the TRA in its June 9 notice stated that “[p]resent subsidization to US producers [could] be established under the CFPC,” a different program that post-dates the POI, because the CFPC “is sufficiently similar to the BTC” that it qualifies as a “replacement program”.⁵ To reach that conclusion, the TRA compared the BTC and CFPC programs’ design and structure, operation, and level of benefit. As explained below and in the U.S. comments of December 19, 2025, it is not appropriate for the TRA to base an affirmative determination on the CFPC program or otherwise to treat it as a “replacement program” that continues the terminated BTC program.

6. As an initial matter, the CFPC falls outside the POI. Although the TRA seeks to demonstrate that the CFPC would satisfy the elements of a countervailable subsidy, during the POI the CFPC was not in place and did not confer any benefits, as the TRA recognizes.⁶ Accordingly, consistent with the TRA’s approach for other programs outside of the POI,⁷ it is not appropriate for the TRA to consider the CFPC during this investigation.

7. Furthermore, the CFPC program is separate and distinct from the BTC program,⁸ and therefore it is not appropriate for the TRA to use the BTC as basis on which to calculate the benefit and the subsidy margin for the countervailing duty. The analysis set forth by the TRA in its June 9 note does not support the conclusion that the CFPC constitutes a “replacement program” for the terminated BTC program. The standard used by the TRA to make that evaluation is unclear; despite numerous differences between the two programs across each factor analyzed by the TRA, which the TRA recognizes, it simply concludes that they are nonetheless “sufficiently similar”.⁹

8. As recognized by the TRA, the BTC provided a flat \$1.00-per-gallon excise tax credit for biodiesel, agri-biodiesel, or renewable diesel blended with petroleum diesel.¹⁰ Blenders could

⁵ Note to public file (9 June 2026), p. 2.

⁶ Note to public file (June 9, 2026), p. 6.

⁷ Section F4 of the Statement of Essential Facts details eleven additional programs that the TRA declined to consider further because the programs were not in place during the POI.

⁸ *See, e.g.*, Statement of Essential Facts, para. 161 (“DGD and Valero state that the requirements of receiving [BTC and CFPC] differ, as the BTC provided \$1.00 per gallon credit to entities that blended FAME or HVO in the US, whereas the [CFPC] is a production tax credit that is determine by the lifecycle GHG emissions of the fuel produced and includes further requirements to qualify for the full credit amount.”).

⁹ *See* note to public file (June 9, 2026), pp. 8-11 (noting, but dismissing, differences between the two programs including differences in: program structure, eligibility, and amount of benefits received).

¹⁰ Statement of Essential Facts, para. 163.

claim the excise tax credit against fuel-tax liability and receive any excess as a direct payment from the Internal Revenue Service. Alternatively, producers of biodiesel, agri-biodiesel, or renewable diesel could claim a \$1.00-per-gallon nonrefundable income tax credit. These incentives were primarily taken as blender-level excise tax credits, which allowed quarterly claims, and were not limited by the claimant's tax liability.¹¹

9. The CFPC is, in contrast, an income-tax credit claimed annually and limited by the taxpayer's income-tax liability.¹² Under this program, if a producer does not have enough tax liability to take advantage of their clean fuel production tax credits, they may carry them forward to future tax years or transfer their credits to unrelated taxpayers.¹³

10. Under the CFPC, producers of qualifying clean transportation fuels may earn a per-gallon income tax credit based on how much their fuel's lifecycle greenhouse-gas (GHG) emissions fall below a statutory baseline. The credit amount is calculated by multiplying the applicable rate by the fuel's percentage emissions-reduction score as determined under the U.S. Department of Energy's 45ZCF-GREET lifecycle model.¹⁴ Credit values increase as carbon-intensity approaches zero, but cannot exceed \$1.00 per gallon (or \$0.20 per gallon for producers that do not meet prevailing-wage and apprenticeship requirements).¹⁵ The credit applies to qualifying fuel sold before January 1, 2030.

11. Therefore, the BTC and CFPC are two distinct programs, with different eligibility criteria, and which provide different incentives. Indeed, as noted above, in contrast to the BTC, the CFPC provides credit values tied to the carbon intensity (CI) *only* for fuels achieving a CI less than 50 kg CO₂e/MMBtu.¹⁶ To claim a credit of \$1.00 per gallon under the CFPC, the fuel's net CI would have to be zero (carbon neutral). However, the average CI rate for HVO production is approximately 35.4 kg CO₂e/MMBtu,¹⁷ significantly higher than net zero. Since

¹¹ Statement of Essential Facts, para. 163.

¹² See Statement of Essential Facts, paras. 211-212; 26 U.S.C. § 45Z. See also Congressional Research Service, The Section 45Z Clean Fuel Production Credit, Feb. 18, 2025, accessible at:

https://www.congress.gov/crs_external_products/IF/PDF/IF12502/IF12502.4.pdf

¹³ 26 U.S.C. § 6418.

¹⁴ 26 U.S.C. § 45Z(b)(1)(B). The 45ZCF-GREET Model calculates an estimated carbon intensity (CI) score for HVO produced via various production processes (i.e., pathways) and via various feedstocks. The net CI score is based on an analysis of the full life cycle from production through end use of the biofuel including all inputs to growing the feedstock (including emissions from fertilizer production and use), harvesting, transportation to a production facility; all of the energy inputs at the production facility, including natural gas, electricity and the carbon intensity of the grid where the facility is located; plus any emissions associated with transporting the fuel to the point of use, and emissions from combusting the fuel (i.e., tailpipe emissions from a heavy duty vehicle or aircraft in the case of aviation fuel).

¹⁵ 26 U.S.C. § 45Z(a)(2).

¹⁶ 26 U.S.C. § 45Z(b)(1)(A)(i). See also Statement of Essential Facts, para. 212.

¹⁷ See U.S. Environmental Protection Agency, Lifecycle Greenhouse Gas Results, Graphic entitled "Lifecycle GHG Emissions by Feedstock and Fuel Type," <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/lifecycle-greenhouse-gas-results>. As discussed in footnote 20, the CI score calculated under the 45ZCF-

the vast majority of HVO will not achieve the net-zero CI needed to claim a credit of \$1 per gallon, it is evident that the amount of the tax credit provided to HVO under the CFPC will not equate to the amount provided under the BTC.

12. Accordingly, it is not appropriate for the TRA to find that the CFPC is a countervailable subsidy during this investigation.

III. ECONOMIC INTEREST TEST

13. In its note to public file of June 9, 2026, the TRA updated its application of the economic interest test (EIT). The TRA found that changes in price movements limited the substitutability of FAME and HVO in the UK market for biofuels during the POI, and noted that toward the end of the POI sales of lower-priced FAME had displaced sales of HVO.¹⁸ The TRA also concluded, following additional analysis of market and competition impacts, that competition between FAME and HVO was attenuated because of “the differing properties of” HVO. Specifically, the TRA determined that fuel traders used HVO in higher blends of biofuels.¹⁹ In the absence of any domestic production of HVO in the UK, the TRA considered that the issuance of countervailing duties on imports of HVO from the United States could negatively impact on downstream traders unable to switch to FAME to produce higher blends of biofuels.²⁰ On these bases, the TRA concluded that imposing countervailing duties on HVO would not be in the economic interest of the United Kingdom.²¹

14. The United States supports the TRA’s updated position, which reflects, as the United States has argued in past comments, that imports of HVO and domestically produced FAME are not “like goods”.²² In comments filed on June 6, 2025, the United States emphasized that, among other key differences, FAME and HVO were neither “commercially” nor “functionally” alike because they were subject to different conditions of competition in the UK market. Specifically, the United States argued that FAME was subject to strict blend walls that precluded fuel traders from using it to produce higher blends of biofuels, whereas HVO is a “drop-in” biofuel that can be used to replace conventional diesel without the need for prior blending.²³ The TRA’s note to public file of June 9, 2026 refers to new data from the Zemo Partnership

GREET Model will be unique to each specific HVO production based on a variety of factors. Regardless, even under other methodologies, including the U.S. Environmental Protection Agency’s Lifecycle Greenhouse Gas Analysis, it is evident that HVO production generally is not zero, and therefore will not likely achieve the maximum \$1.00 per gallon credit from the CFPC.

¹⁸ Note to public file (June 9, 2026), pp. 12-13.

¹⁹ Note to public file (June 9, 2026), p. 13.

²⁰ Note to public file (June 9, 2026), p. 14.

²¹ Note to public file (June 9, 2026), p. 14. The TRA also considered changes to expected environmental impacts. It concluded that any additional environmental impacts from HVO emissions in the UK, which some evidence suggested might lead to higher nitrogen dioxide emissions, were not likely to be significant.

²² See, e.g., U.S. Government Comments (June 6, 2025), pp. 1-10.

²³ U.S. Government Comments (June 6, 2025), pp. 5-7.

indicating that up to 66 percent of HVO in the UK market is used to produce higher blends of biofuels.²⁴ FAME biofuels are not substitutable with HVO for use in blends above 7 percent of volume.²⁵

15. Additionally, the U.S. comments of July 29, 2025 emphasized that FAME and HVO were not substitutable due to their differing properties, and noted that a study by the Zemo Partnership filed by the Applicant supported the contention that HVO is generally higher-priced than FAME, notwithstanding that TRA had found the price differential between HVO and FAME to have reduced in a recently concluded transition review.²⁶ The United States also argued that information in the Revised Application filed by the Applicant suggested that the reduction in the price differential between HVO and FAME was caused by rising feedstock prices prevailing in the United Kingdom, rather than allegedly low prices of imports of HVO from the United States.²⁷ The TRA's Note to public file suggests that this situation has corrected itself, and projects that HVO is likely to continue to be sold at premium prices due to higher demand for biofuels and feedstocks, and the use of HVO as a drop-in alternative fuel.²⁸

16. In sum, the TRA's revised position on the EIT accounts for the important differences between FAME and HVO that attenuate competition and limit substitutability between them.

IV. CONCLUSION

17. The United States thanks the TRA for the opportunity to address the June 9, 2026, note to public file. We appreciate the TRA's careful consideration of these issues, and we continue to urge the TRA to promptly terminate this investigation.

²⁴ Note to public file (June 9, 2026), p. 13.

²⁵ U.S. Government Comments (June 6, 2025), p. 5.

²⁶ U.S. Government Comments (July 29, 2025), pp. 2-3.

²⁷ U.S. Government Comments (July 29, 2025), pp. 3-4.

²⁸ Note to public file (June 9, 2026), p. 12.