AS0067 – Anti-subsidy investigation concerning hydrotreated vegetable oil (HVO) from the United States of America

Comments on the Note of 9 June 2026

Diamond Green Diesel LLC & Valero Energy Ltd

16 June 2026

EXECUTIVE SUMMARY

Diamond Green Diesel LLC ("**DGD**") and Valero Energy Ltd ("**VEL**") strongly disagree with the TRA's intention to make a final affirmative determination under paragraph 11(2) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 ("**Taxation Act**") as set out in the Note of 9 June 2026 ("**June Note**").[1]

The TRA erred when concluding that:

- The "goods have been or are being imported into the United Kingdom and are subsidised" within the meaning of paragraph 11(2)(a) of Schedule 4 to the Taxation Act, and that there is evidence of "present" subsidisation; and

- The importation of the allegedly subsidised goods from the US has "caused or is causing injury to a UK industry in those goods" within the meaning of paragraph 11(2)(b). Given the limited substitutability between FAME and HVO, a UK industry producing only FAME cannot be injured by imports of HVO products which it does not produce, sell, or compete with.

DGD and VEL submit that a final affirmative determination would breach both WTO and UK law given the TRA's failure: (i) to establish whether DGD received a financial contribution from the 45Z Production Tax Credit ("**45Z PTC**", also referred to as the Clean Fuel Production Credit ("**CFPC**")); and (ii) to determine the amount of benefit conferred for goods imported into the UK during the Period of Investigation ("**POI**").

We urge the TRA to revert its findings and issue a final negative determination considering that: (i) the Blenders Tax Credit ("**BTC**") has expired; (ii) the 45Z PTC is not a replacement of the BTC; (iii) the TRA cannot calculate the amount of 45Z PTC received in relation to DGD's HVO imported into the UK; and (iv) there is no causal link between the allegedly subsidized HVO imports from the US and the injury to the UK FAME industry.

We agree with the TRA's conclusion that the application of countervailing measures against HVO imported from the US is not in the economic interests of the UK, and that the Economic Interest Test ("**EIT**") is not met. The very limited substitutability of HVO and FAME, coupled with the lack of sufficient alternative sources of supply, would disproportionately affect the UK downstream industry and consumers.

[1] Available here.

1. INTRODUCTION

This submission sets out the comments of DGD and VEL on the ongoing anti-subsidy investigation concerning HVO originating in the US ("**AS0067**"), in particular the comments on the TRA's findings presented in the June Note.

This submission incorporates by reference DGD's and VEL's previous submissions of 23 September 2025 and 29 December 2025.

2. 45Z PTC IS NOT A REPLACEMENT OF THE BTC

In the Note of 12 March 2026 ("**March Note**"), the TRA notified its intention to make a final negative determination on subsidisation on the basis that: (i) the BTC has expired; and (ii) the 45Z PTC did not appear to be a continuation or a replacement of the BTC. In particular, the TRA considered that the BTC – the primary subsidy included by the TRA within the scope of investigated subsidies – no longer conferred a benefit.

In the June Note, however, the TRA reversed its position, concluding that the 45Z PTC constitutes a replacement subsidy for the BTC. DGD and VEL strongly disagree with the change of the TRA's position, which we consider unfounded for the reasons outlined below.

(a) BTC and 45Z PTC offer significantly different levels of benefits

The BTC was a blender's credit providing a fixed $1.00 per gallon for biofuels (including FAME and HVO) blended and sold as transport fuel, regardless of lifecycle emissions or feedstock type and origin.

The 45Z PTC is a production credit available to fuel producers, which is calculated by reference to a fuel's lifecycle carbon intensity ("**CI**"), with multiple qualifying conditions, including prevailing wage and apprenticeship requirements and wide-reaching constraints linked to input feedstock origin. The TRA itself acknowledges in the June Note that the "*real-world value of the CFPC is expected to be lower than the BTC*".[2] However, the TRA concludes that "*the BTC and CFPC while not offering identical levels of benefit offer significant benefit, and that the two schemes are sufficiently similar in terms of their level of benefit*."[3]

DGD and VEL contest this finding and submit that the TRA's determination of the level of benefits between the BTC and the 45Z PTC is based on incomplete and inadequate information. [Confidential: commercially sensitive information]

The TRA has confirmed that it "*had sight of evidence that the CFPC in practice is not providing the full $1 per gallon benefit for HVO that BTC provided*".

As such, the TRA's subsequent determination that the level of benefits under the two schemes is similar is inconsistent with the data verified and available on the record. Overall, following the expiry of the BTC, DGD's revenues from low carbon credits as reported in its 2025 financial statement have decreased by 53%. [Confidential: commercially sensitive information] This is clear evidence that the

[2] June Note, p. 10.
[3] June Note, p. 11.

TRA's determination that the 45Z PTC offers a similar level of benefits to the BTC is inaccurate.

The TRA's assessment of the level of benefits under the 45Z PTC in the June Note is based on several inaccurate assumptions and oversimplifications, namely:

- First, the TRA points out that "*maximum benefit conferred is identical between the subsidy programmes*". The TRA, however, should be aware that this is a purely hypothetical number for the 45Z PTC, as it would require the physically impossible HVO production with zero carbon footprint. [Confidential: commercially sensitive information] The alleged $1 per gallon "maximum benefit" under the 45Z PTC is purely a theoretical figure and cannot be considered as a real-life benchmark for determining the level of the benefits.

  The 45Z PTC is a production tax credit based on the CI of the fuel. The amount of the credit is reduced by the lifecycle greenhouse gas ("**GHG**") emissions of the fuel, with lower carbon intensity resulting in a higher credit. [Confidential: commercially sensitive information]

- Second, the TRA misinterprets the importance of feedstock restrictions, which have a significant impact on the cost, production and availability of qualifying HVO. [Confidential: commercially sensitive information] The very limited availability of North American ISCC-certified UCO effectively is a deterrent to increasing exports to the UK that could benefit from both the 45Z PTC and receipt of double the number of UK Renewable Transport Fuel Certificates ("**RTFCs**") under the Renewable Transport Fuel Obligation ("**RTFO**") Scheme. This is because HVO produced from feedstocks that qualify for 45Z PTC, such as North American-sourced soybean oil, canola, DCO, or tallow, would only qualify for single counting under the RTFO. [Confidential: commercially sensitive information]

  In addition, the US import restrictions on feedstocks sourced from outside North America preclude US HVO from benefiting from both the 45Z PTC scheme and also receiving double the number of RTFCs under the RTFO. Thus, the 45Z PTC is significantly more limited in scope compared to the BTC scheme.

- Third, the 45Z PTC includes prevailing wage and apprenticeship requirements for facilities to qualify for the full credit amount, further increasing the costs necessary to qualify for any rates of the 45Z PTC credit over $0.20 per gallon. In the June Note, the TRA concluded that 92% of HVO facilities in the US can benefit from the alternative amount of $1 per gallon without having to meet prevailing wage requirements because they were in service before 1 January 2025 are not subject to prevailing wage requirements for the construction of such a facility.[4] TRA acknowledges that prevailing wage requirements for labour on alteration or repair apply from 31 December 2024.

  In reality, even the HVO facilities that started operating before 1 January 2025 are effectively required to meet the prevailing wage and apprenticeship requirements. In order to maintain their functioning, safety and effectiveness, HVO production facilities need to be consistently maintained and repaired.

[4] June Note, p. 8.

Therefore, in order to continue qualifying for 45Z PTC credits over $0.20 per gallon, they must establish, implement and maintain appropriate administrative systems at their HVO facilities to ensure compliance with the prevailing wage and apprenticeship requirements. As such, completion of the initial construction phase before 2025 does not shield an HVO facility from the applicability of the prevailing wage and apprenticeship requirements under the 45Z PTC. [Confidential: commercially sensitive information] Moving from a program with zero labour compliance requirements to one governed by strict IRS labour oversight introduces a severe, ongoing risk profile with potential for significant penalties that did not exist under the BTC.

- Fourth, the TRA wrongly concludes that the "*CFPC benefit will increase year on year due to inflationary adjustments, which in 2025 were 6%*". The purpose of inflationary adjustments is to maintain the real-world value of the tax credit in light of currency depreciation. The TRA notes that the difference between BTC and 45Z PTC will be "*reducing year on year, due to the inflationary adjustment made to the CFPC*".[5] The TRA omits the critical information that it would take thirteen years – until 2040 – for the annual inflationary adjustments of 6% to bring the TRA's current estimate of 45Z PTC benefits for HVO ($0.48) to $1 per gallon.

- Finally, in determining the level of benefits for HVO, the TRA relies on its estimates of 45Z PTC credits for the production of sustainable aviation fuel ("**SAF**"). As explained in detail below, the inclusion of payments received for SAF in reaching a conclusion that the 45Z PTC offers benefits to HVO under investigation breaches both WTO and UK law. SAF is explicitly excluded from the product scope of the present investigation, and any payments received for the production of SAF must be excluded from the TRA's calculations of subsidisation.

(b) BTC and 45Z PTC significantly differ in their design and structure

In the June Note, the TRA considers that "*while not alike in all aspects, the CFPC design and structure are sufficiently similar to the BTC*".[6]

As explained above, the 45Z PTC is designed in a significantly more restrictive way. In particular, it sets out the various requirements restricting the level of benefits including feedstock origin restrictions, CI requirements, prevailing wage and apprenticeship requirements, and inflation adjustments. Importantly, contrary to the TRA's conclusion that the prevailing wage and apprenticeship requirements do not apply to the majority of US HVO production, these requirements do, in fact, have a significant impact on the costs and operations of all HVO production facilities, as labour required for their maintenance and upgrades is explicitly covered by these requirements.

We disagree with the TRA and submit that the very basic common denominators such as a requirement for the registration with the IRS, administration by the IRS, submission of claims by filling out a form of a section 38 general business income

[5] June Note, p. 11.
[6] June Note, p. 9.

tax credit are present for a very high number of subsidies across all industries and, therefore, do not indicate that the 45Z PTC and the BTC are similar.

The temporal succession of the 45Z PTC after the expiration of the BTC does not imply substantial similarities but simply that the US authorities intended to move from one policy framework to another, as confirmed by the significant differences between the two schemes.

(c) BTC and 45Z PTC operate in different ways

The TRA asserts that the distinction between the BTC, which is available to blenders of HVO, and diesel fuel that create a qualified biodiesel mixture, and the 45Z PTC, which is available to producers of low-emission transportation fuels, is immaterial because both schemes ultimately benefit similar market participants. However, in the June Note, the TRA identifies a blender, Neste, that is eligible for the BTC but not for the 45Z PTC, which demonstrate the existence of separate eligibility criteria.[7]

The TRA relies on a legislative proposal – understood to be references to proposed H.R. 8497 bill to reinstate the BTC – that has not been enacted. The TRA cites the presence of a "*denial of double benefits*" clause in those proposals to infer "*clear eligibility overlap*" and to suggest that "*the CFPC was designed to fulfil an equivalent beneficial role as the BTC*."[8] That inference is misplaced because draft legislation cannot be treated as evidence.

In summary, the marked differences in structure, operation, and – most importantly – level of potential benefit (if any) preclude any finding that the 45Z PTC constitutes a replacement of the BTC. The TRA itself acknowledged, throughout the June Note, that the two schemes differ in design, scope, eligibility, beneficiaries, and benefits. Accordingly, the 45Z PTC could not serve as the basis of countervailing duties on imports previously covered by the BTC.

3. THE TRA DOES NOT HAVE DATA TO DETERMINE 45Z PTC SUBSIDISATION

Without prejudice to DGD and VEL's position that the 45Z PTC is not a replacement for the BTC, if the TRA were to base any measures on the 45Z PTC, it would first need to establish – on the basis of questionnaire responses and verified data – both the existence and the amount of any benefit conferred by that scheme. Merely characterising the 45Z PTC as a "replacement" for the BTC does not discharge the TRA's obligation to examine whether, and to what extent, exports of the goods concerned actually benefit from a countervailable subsidy.

3.1 The TRA cannot rely on the BTC data to calculate the countervailable amount of the 45Z PTC that is attributed to HVO imports

The TRA's intention to make a final affirmative determination under paragraph 11(2) of Schedule 4 to the Taxation Act, despite the failure to determine the amount of benefit (if any) conferred by the 45Z PTC to the imports under investigation, is inconsistent with both UK WTO obligations and UK law.

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[7] June Note, p. 9.
[8] June Note, p. 9.

(a) UK WTO obligations

A fundamental principle underpinning anti-subsidy investigations is that:

- countervailing duties may be imposed only to offset "current" subsidisation, i.e., subsidisation that exists at the time the measures are imposed; and
- must not exceed the amount of subsidisation "found to exist".

This requires investigating authorities to establish, with sufficient precision and on the basis of evidence, both the existence and the magnitude of the benefit attributable to the imports covered by the investigation.

As explained below, the TRA's reliance on BTC data as a proxy for the benefit conferred under the 45Z PTC fails to meet this standard. The TRA's benefit analysis in the June Note is speculative and does not reflect the benefit actually received by the investigated imports, resulting in a significant overestimation of the level of subsidisation. This approach is inconsistent with the requirements of the WTO Agreement on Subsidies and Countervailing Measures ("**SCM Agreement**") and Article VI:3 of the General Agreement on Tariffs and Trade 1994 ("**GATT 1994**").

First, under Article 1.1 of the SCM Agreement, a financial contribution by a government is a subsidy only if it confers a "benefit". As held by the Appellate Body in *Canada – Aircraft*, "*a 'benefit' does not exist in the abstract, but must be received and enjoyed by a beneficiary*".[9] Thus, the obligation on an investigating authority is to "*ascertain as accurately as possible the amount of subsidisation bestowed on the investigated products*";[10] rather than presuming its existence or relying on proxy data that does not reflect the benefit actually received by the imports under investigation.

Second, WTO law requires that countervailing duties be limited to "current" subsidisation, i.e., subsidisation that exists at the time the measures are imposed.

According to Article 19.4 of the SCM Agreement, "*[n]o countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidisation per unit of the subsidized and exported product*". In this respect, Article 19.4 has been interpreted in *Japan – DRAMs (Korea)* as implying that countervailing duties may only be imposed if there is "present" subsidisation at the time of duty imposition.[11] As DGD and VEL explained in the submission dated 29 December 2025, this principle has also been extensively applied by the European Commission in the EU anti-subsidy investigations.[12]

The foregoing implies that the TRA cannot countervail a subsidy that has been withdrawn. Accordingly, any countervailing duty based on BTC data would not

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9 Appellate Body Report, *Canada – Aircraft*, para. 154.

10 Panel Report, *US – Ripe Olives from Spain*, para. 7.331. *See* also: Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 139.

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

12 See e.g. 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 (182), (184)-(189).

reflect the "current" subsidisation and would therefore be inconsistent with Article 19.4 of the SCM Agreement.

Third, countervailing duties must be limited strictly to the subsidy attributable to the imported product under investigation.

According to the first sentence of Article VI:3 of the GATT 1994:

"*No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation*".

As clarified by the panel in *US – Softwood Lumber VII*, this provision requires investigating authorities to ascertain "*the precise amount of a subsidy attributed to the imported products under investigation*" before imposing countervailing duties.[13]

The obligation under Article VI:3 of the GATT 1994 is reinforced by Article 19.4 of the SCM Agreement, which prohibits the levying of countervailing duties "*in excess*" of the amount of subsidy found to exist with respect to the imported product. As recently confirmed by the panel in *EU – CVDs on Biodiesel (Indonesia),* "*[t]he main thrust of Article 19.4 is to ensure that the amount of countervailing duty does not exceed the amount of subsidy found to exist for the product under investigation*",[14] thereby establishing a strict quantitative ceiling.[15] In other words, the WTO "*Members must not levy countervailing duties in an amount greater than the amount of the subsidy found to exist*".[16]

In the present case, this means that there can be no affirmative determination that "*goods have been or are being imported into the United Kingdom and are subsidised*"[17] where neither the existence nor the precise amount of the benefit – and, consequently, the level of any potential countervailing duty – has been properly established.

As the Appellate Body emphasised in *US – Countervailing Measures on Certain EC Products,* countervailing duties must be confined to the subsidy "*found to exist*", both in amount and scope. If an investigating authority cannot ascertain the precise amount of a subsidy attributable to the imported products under investigation, it cannot make a final affirmative determination that the goods concerned are subsidised.[18]

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13 Panel Report, *US – Softwood Lumber VII,* para. 7.111 referring to Appellate Body Report, *Anti-Dumping and Countervailing Duties (China)*, para. 601. See also: Appellate Body Report, *US – Washing Machines*, para. 5.268.

14 Panel Report, *EU – CVDs on Biodiesel (Indonesia)*, para. 7.89.

15 Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 554.

16 Appellate Body Report, *US – Washing Machines*, para. 5.267.

17 Paragraph 11(2)(a) of Schedule 4 to the Taxation Act.

18 "*… [U]nder Article VI:3 of the GATT 1994, investigating authorities, before imposing countervailing duties, must ascertain the precise amount of a subsidy attributed to the imported products under investigation. In furtherance of this obligation, Article 10 of the SCM Agreement provides that Members must "ensure" that duties levied for the purpose of offsetting a subsidy are imposed only "in accordance with" the provisions of Article VI:3 of the GATT 1994 and the SCM Agreement. Moreover, Article 19.4 of the SCM Agreement, consistent with the language of Article VI:3 of the GATT 1994, requires that "[n]o countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist".* Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 139. See also: Appellate Body Report, *US – Washing Machines*, paras. 5.267-5.268.

Accordingly, it follows from Article VI:3 of the GATT 1994 and Article 19.4 of the SCM Agreement, as consistently interpreted in WTO jurisprudence, that countervailing duties may only be imposed where the investigating authority has established – on the basis of positive evidence – the existence and precise amount of a subsidy attributable to the imported product under investigation.

Fourth, DGD and VEL contest the Renewable Transport Fuel Association ("**RTFA**") assertion that, on account of the alleged existence of a "replacement subsidy" (*quod non*), "*the TRA is under no obligation to calculate the exact subsidies currently provided under the CFPC, let alone the precise amounts that individual US HVO exporting producers qualify for or have actually claimed or received for tax year 2025 or beyond".* According to the RTFA, it suffices for the TRA to establish that *"the statutory language of the CFPC continues the subsidisation*".[19]

The RTFA's argument is fundamentally flawed. The requirement to quantify the actual benefit conferred on individual recipients cannot be replaced with an abstract assessment of the legislative framework. Such an approach is manifestly inconsistent with the UK's WTO obligations.

As clarified by the Appellate Body:

"A 'benefit' does not exist in the abstract but must be received and enjoyed by a beneficiary or a recipient. Logically, a 'benefit' can be said to arise only if a person, natural or legal, or a group of persons, has in fact received something. The term 'benefit', therefore, implies that there must be a recipient. This provides textual support for the view that the focus of the inquiry under Article 1.1(b) of the SCM Agreement should be on the recipient and not on the granting authority".[20]

This interpretation makes clear that the existence of a subsidy cannot be presumed solely on the basis of statutory provisions. Rather, the investigating authority must demonstrate that a benefit has been actually conferred and received by identifiable recipients. This is because "*there can be no 'benefit' to the recipient unless the 'financial contribution' makes the recipient 'better off'*".[21]

This interpretation is further corroborated by Article 14 of the SCM Agreement, which sets forth guidelines for calculating the amount of a subsidy in terms of "*the benefit to the recipient*".[22] Importantly, the reference to "benefit to the recipient" in Article 14 of the SCM Agreement also implies that the word "benefit" is concerned with the "benefit to the recipient" and not with the "cost to government".[23] Thus, by its very terms, this provision requires a concrete, fact-based assessment and quantification of the benefit actually obtained by the beneficiary.

Finally, in their Comments on the TRA's Note to the Public File of 12 March 2026, RTFA advances an extensive argument regarding the standards applicable in administrative (expiry or interim) reviews under Article 21 of the SCM Agreement.[24]

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19 RTFA Comments to TRA Note to Public File of 12 March 2026 dated 9 April 2026 ("RTFA Comments"), para. 42.
20 Appellate Body Report, *Canada – Aircraft*, para. 154.
21 Appellate Body Report, *Canada – Aircraft*, para. 157.
22 Appellate Body Report, *Canada – Aircraft*, para. 155.
23 Appellate Body Report, *Canada – Aircraft*, para. 155.
24 RTFA Comments, paras. 30-34.

In particular, the RTFA submits that Article 21 of the SCM Agreement requires the investigating authority to establish a sufficiently "close nexus" between the "*subsidies that are the subject of the original investigation and the new subsidy allegations that the investigating authority proposes to examine as part of its administrative review*".[25] Building on the case law under Article 21 of the SCM Agreement, the RTFA further asserts that such a "close nexus" exists between the BTC and the 45Z PTC.[26]

The RTFA's reliance on Article 21 of the SCM Agreement is unwarranted. The investigation at issue is not an administrative review. Accordingly, the legal standard applicable is not the continuation test under Article 21 of the SCM Agreement, but rather the threshold requirements for establishing the existence of a countervailable subsidy under Articles 1 and 2 of the SCM Agreement.

To summarize, the TRA affirmative determination on the basis of any measures based on the 45Z PTC, which is allegedly a "replacement" for the BTC does not discharge the UK WTO obligation to examine – on the basis of questionnaire responses and verified data from exporting producers – whether, and to what extent, exports of the goods concerned actually benefit from a countervailable subsidy.

(b) UK law

Even if the TRA were to consider the 45Z PTC to be a replacement for the BTC – with which DGD and VEL firmly disagree – it would still be required to determine the amount of the 45Z PTC subsidy attributable to the goods in accordance with Regulations 23-26 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**Trade Remedies Regulations**"). That determination requires evidence of benefits conferred under the 45Z PTC.

The differences between the BTC and the 45Z PTC preclude an inference of the amount of any 45Z PTC benefit on the basis of BTC data. Accordingly, the TRA cannot determine the subsidy attributable to the imported goods to satisfy the requirements for an affirmative determination under paragraph 11(2) of Schedule 4 to the Taxation Act and the Trade Remedies Regulations.

Under paragraph 11(2) of Schedule 4 to the Taxation Act, the TRA may issue an affirmative determination only if it determines that the goods have been or are being imported into the UK and are subsidised, and the importation of the subsidised goods has caused or is causing injury to a UK industry in those goods.

Regulation 19(2) of the Trade Remedies Regulations explains that to determine whether goods that are imported into the United Kingdom are subsidised, the TRA must determine:

- whether a countervailable subsidy within the meaning of paragraph 3 of Schedule 4 to the Taxation Act exists in relation to goods; and
- the amount of the subsidy that is attributed to those goods.

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[25] RTFA Comments, para. 33, referring to Appellate Body Report, *US – Carbon Steel (India)*, para. 4.543.
[26] RTFA Comments, para. 35.

Regulation 23(1) of the Trade Remedies Regulations expressly requires that the TRA "*must calculate the amount of subsidy attributable to goods*". In particular, the TRA must carry out:

- the determination of the total amount of the countervailable subsidy (Regulation 23(2)(a));
- the determination of the amount of the countervailable subsidy that is attributable to the POI (Regulation 23(2)(b)); and
- the determination of the goods the countervailable subsidy is attributable to during the POI (Regulation 23(2)(c)).

Therefore, the Trade Remedies Regulations require the TRA to calculate the precise amount of the countervailable subsidy and attribute it to imports during the POI. The applicable legal framework does not permit the TRA to presume or speculate as to the extent or amount of benefits under a subsidy programme on the basis of an expired scheme, particularly where that scheme provided for materially different levels of support. It likewise precludes reliance on unverified data as a basis for speculating on the level of any such benefits.

Because the 45Z PTC did not exist during the POI, the TRA cannot calculate any 45Z PTC benefit attributable to imports using the methodology prescribed in Regulations 23-26 of the Trade Remedies Regulations. The legally required calculation, therefore, cannot be completed.

The affirmative determination under paragraph 11(2) of Schedule 4 to the Taxation Act requires identification and quantification of the subsidy attributable to the goods under investigation. The TRA cannot rely on BTC benefit calculations as evidence of the amount of benefit conferred under the 45Z PTC. To rely upon the 45Z PTC, the TRA would have to establish – on the basis of questionnaire responses and verified data from sampled exporting producers – the amount of 45Z PTC benefit attributable to the goods. It has not done so and cannot do so with the information available. An affirmative determination based on 45Z PTC would necessarily rely on unverified assumptions on eligibility and benefit levels, breaching the conditions of paragraph 11(2) of Schedule 4 to the Taxation Act.

3.2 **The TRA cannot rely on publicly available information as "evidence of actual benefit"**

In its June Note, the TRA relies on publicly available information to determine that 45Z PTC offers actual benefits to US producers.

The TRA quotes several public-facing documents as evidence of actual benefits conferred, including DGD's 2025 consolidated financial statements, which state that it received $598.7 million in the form of clean fuel production credits. Based on this information, the TRA concluded that parties have successfully claimed a benefit and there is verifiable evidence that the 45Z PTC is conferring a financial benefit to producers of HVO in the US.

As explained above, WTO and UK law require precise determination of "subsidisation", associated "benefits" and attribution to imports of the goods concerned under the POI. The TRA has failed to determine the exact amount of subsidy attributable to the goods covered by the present investigation and imported to the UK.

As the TRA must specifically determine the level of subsidies attributable to DGD's products imported into the UK, the mere existence of indications that payments in connection with total DGD's sales might have been received is insufficient to satisfy the requirements set out in Article VI:3 of the GATT 1994, Articles 10 and 19.4 of the SCM Agreement, as well as Regulations 23 to 26 of the Trade Remedies Regulations.

3.3 SAF is not the product under investigation, and any subsidies allegedly received must be disregarded

In order to show that the products under investigation allegedly benefit from 45Z PTC, the "*TRA has estimated the likely value of CFPC credit claimable for a gallon of HVO and SAF produced between 2025 and 2029*".[27] The TRA explains that "*HVO production uses the same manufacturing processes and equipment as SAF*" and the 45Z PTC claim method benefits all production, including both HVO and SAF.[28]

DGD and VEL submit that SAF is not covered by the scope of the present investigation, and any alleged subsidies relating to SAF are therefore legally irrelevant.

(a) SAF is not covered by the present investigation

DGD and VEL recall that the definition of the product under investigation serves to delineate the scope of the investigation and to identify the universe of products that may ultimately be subject to countervailing measures. It constitutes the "starting point" of the investigation and frames the entirety of the authority's substantive analysis.[29]

In this respect, there must be strict parallelism between (i) the defined scope of the product under investigation, and (ii) the substantive analysis conducted by the investigating authority within that framework. The authority is therefore bound by that definition and may not base its subsidy findings on products falling outside the scope of the investigation.

According to the Notice of Initiation and the Statement of Essential Facts ("**SEF**"), the product under investigation is clearly defined as:

"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".[30] *(emphasis added)*

It follows clearly and unequivocally from this definition that SAF falls outside the scope of the present investigation. Accordingly, any alleged subsidies granted to SAF production cannot be attributed to the product under investigation, nor can they form the basis for calculating the level of subsidisation applicable to HVO imports.

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27 June Note, p. 1.
28 June Note, p. 4.
29 Panel Report, *US – Softwood Lumber V,* para. 7.152.
30 See: Notice of Initiation, Investigation No. AS0067; SEF, para. 77.

(b) SAF and HVO are not interchangeable and do not share the same manufacturing processes or equipment

In addition to the fact that SAF is clearly not covered by the scope of the present investigation, SAF is not interchangeable with HVO. Furthermore, as explained below, SAF and HVO do not share the same manufacturing processes or equipment.

First, SAF differs from HVO in terms of physical, chemical, and technical characteristics, such as density, cloud point, cold filter plugging point, flash point, water content, sulfur, freezing point, and low-temperature viscosity.[31]

SAF's chemical structure is designed to meet the requirements of jet fuel and is governed under the ASTM D7566 standard.[32] HVO is designed for use in road diesel engines and is regulated under the EN15940 standard.[33]

Second, SAF is not interchangeable with HVO. HVO cannot be used for aviation engines. SAF is not appropriate for use in diesel engines and fails to meet the legal and regulatory requirements set out for diesel fuels in the UK and the EU. Their distribution channels and customer bases are entirely separate. The above is confirmed, among others, by the European Commission, which has determined in *China – Biodiesel (AD700)* that SAF is not "*interchangeable or in competition*" with HVO due to differences in end use, and as such, they are not "like" products.[34]

Third, contrary to the June Note, HVO production does not "*use the same manufacturing processes and equipment as SAF*".[35] Of the SAF pathways on the market, only SAF produced from hydroprocessed esters and fatty acids ("**HEFA-SAF**") employs hydrotreatment processes – a step also utilised in HVO production. The remaining types of SAF (also covered by 45Z PTC) have a completely different production process.[36]

Fourth, HVO production sites cannot be used to manufacture HEFA-SAF. While both processes use hydrotreatment reactors, an HVO facility cannot simply switch to manufacturing HEFA-SAF due to differences in production. Specifically, HEFA-SAF production requires additional hydrocracking capacity, more severe isomerisation capability, and a modified fractionation configuration. [Confidential: commercially sensitive information]

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31 See e.g.: 'HVO Fuel EN 15940 Specifications' (*Nationwide Fuels*), available here; 'Specifications for EN 15940 paraffinic diesel fuel' (*Crown Oil*), available here; 'Product Data Sheet – Neste MY Sustainable Aviation Fuel', available here; B. Wang et al, "Sustainable aviation fuels: Key opportunities and challenges in lowering carbon emissions for aviation industry", *Carbon Capture Science & Technology* 13 (2024), available here.

32 ASTM D7566 is an international standard that regulates the manufacture of aviation turbine fuel consisting of conventional and synthetic blending components.

33 The EN 15940 standard lays down requirements for paraffinic diesel fuel.

34 Commission Implementing Regulation (EU) 2025/261 of 10 February 2025 imposing a definitive anti-dumping duty on imports of biodiesel originating in the People's Republic of China, recitals (17)-(25).

35 June Note, p. 4.

36 HEFA-SAF and HVO differ substantially in chemical conversion routes, process severity, infrastructure requirements, and production costs. Separate process configurations and certification under applicable fuel standards are required to ensure compliance with the relevant specifications. SAF production requires an additional processing stage – either an extra fractionation step or a dedicated reactor – to meet jet fuel specifications. In addition, SAF production necessitates a segregated finished product logistics system, including dedicated short transfer lines and multiple storage tanks to prevent cross-contamination.

The TRA's assertion that US producers can freely alternate between HVO and SAF production to capture higher tax credits ignores these engineering, certification, chemical, and investment realities.

The decision to produce HVO or SAF is driven by various customer commitments and market requirements, and it is constrained by a plant's infrastructure. DGD does not consider that a rapid shift from HVO to SAF would be economically feasible and is not aware of such practices.

(c) The inclusion of SAF-related 45Z PTC amounts in the present investigation is inconsistent with WTO law

As explained above, the definition of the product under investigation constitutes the "starting point" of the investigation, and frames the entirety of the authority's substantive analysis.[37] An investigating authority is therefore bound by that definition and cannot extend its analysis – whether directly or indirectly – to products that fall outside its scope.

Accordingly, where a product is excluded from that definition – as is the case for SAF here – it cannot be relied upon, directly or indirectly, in the assessment of subsidisation, including for the purposes of determining the existence and magnitude of any benefit.

As explained above at Section 3.1, under Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994, an investigating authority "*has an obligation to ascertain the precise amount of subsidy attributed to the imported products under investigation*".[38] The panel in *US – Lead and Bismuth II*, noted that "*a countervailing duty may only be imposed on an imported product if it is demonstrated that a (countervailable) subsidy was bestowed directly or indirectly on the manufacture, production or export of that merchandise*".[39]

It follows that subsidies allegedly granted to SAF – an entirely different product explicitly excluded from the scope of this investigation product – cannot be attributed to HVO imports. Any such attribution would be inconsistent with the applicable law, including Article 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994. In light of the above, the TRA's reliance on the alleged SAF-related 45Z PTC benefits is legally unfounded.

4. INJURY AND CAUSAL LINK

As established in WTO jurisprudence, in scenarios contemplating "*a range of different product types that are distinguished by considerable price differences*", an investigating authority is required to assess the "*substitutability*" between the allegedly dumped imports and the domestic like products.[40]

In this respect, DGD and VEL concur with the TRA's conclusions in the June Note that:

- The price of HVO increased significantly post-POI and diverged from that of FAME;

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37 Panel Report, *US – Softwood Lumber V,* para. 7.152.
38 Panel Report, *China – Broiler Products*, para. 7.261.
39 Panel Report, *US - Lead and Bismuth II,* para. 6.56.
40 See e.g. Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262.

- This price divergence is not temporary; and
- In light of this development, substitution between the two products has been reduced.[41]

As established in DGD and VEL's submissions of 23 September 2025 and 29 December 2025, FAME and HVO are fundamentally distinct products in terms of their physical and chemical characteristics, production processes, end uses, degree of interchangeability, and consumer preferences, which translate to different prices. As a result, the competitive overlap between HVO imported from the US and domestically produced FAME is, at most, limited.

Importantly, the TRA itself has recognized these differences in the Final Recommendations in TD0004 and TS0005 of 10 November 2022 and determined that the price difference between HVO from the US and FAME produced in the UK was too large for the products to compete against each other and considered it "*economically rational that UK blenders would opt for the less expensive product (FAME) over HVO in order to satisfy the blending mandate and their requirements under the RTFO*".[42] [Confidential: data available under subscription]

Given the lack of interchangeability, the UK FAME industry cannot be injured by imports of products it does not produce. As noted by the WTO panel in *China – Autos (US)*, merely finding that domestically produced goods are "like" the imported products for the purposes of Article 2.6 of the Anti-Dumping Agreement is insufficient for assessing the effects of subject imports on domestic industry prices when there are significant differences between the imported and domestically produced products.[43]

Similarly, in *China – HP-SSST (EU)/China – HP-SSST (Japan)*, the Appellate Body has clarified that "*whether two products compete in the same market is not determined simply by assessing whether they share particular physical characteristics or have the same general uses*"; and that "*it may also be relevant to consider whether customers demand a range of products or whether they are interested in only a particular product type*".[44] An examination of the competitive relationship between products is required to determine whether they form part of the same market. Notably, the products are in the same market only when they are interchangeable or substitutable.[45] As confirmed by the evidence on the record, HVO and FAME are not interchangeable and serve different market segments.[46] The return to normal structural price differences in 2025 and 2026 further confirms this lack of competitive substitutability.

In light of the above, given the differences in the physical and chemical characteristics, production processes, end uses, consumer preferences, and prices of FAME and HVO, the UK industry cannot be injured by imports of product types that it does not produce, sell, or compete with.

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41 June Note, pp. 12-13.
42 Para. 185 of Final Recommendation, TD0004; para. 184 of Final Recommendation, TS0005.
43 Panel Report, *China – Autos (US)*, paras. 7.278-7.282.
44 Appellate Body Report, *China – HP-SSST (EU)/China – HP-SSST (Japan)*, para. 5.263 citing Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 1120.
45 Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262 referring to Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, paras. 1119-1120.
46 See also: Section 5.2 below.

5. ECONOMIC INTEREST TEST

We agree with the TRA's revised determination that countervailing measures on imports of HVO from the US would not meet the EIT in accordance with paragraph 25(2) of Schedule 4 to the Taxation Act.

HVO and FAME are not substitutable due to sustained and significant price differences, distinct end-uses, and technical constraints, with HVO primarily serving higher-blend and specialised applications that FAME cannot fulfil. At the same time, the UK is heavily dependent on imports and lacks alternative sources capable of replacing the US supply, meaning that any measures would lead to supply shortages, increased prices, and reduced competition. These effects would severely adverse downstream users and undermine the UK's environmental objectives, without delivering any meaningful benefits to the domestic industry.

5.1 Price movements

In the June Note, the TRA recognised that the price of HVO has increased significantly post-POI and further diverged from that of FAME. The TRA does not consider this price divergence to be temporary. Given the change in price, the TRA considers that substitution between the two products is likely to have reduced. DGD and VEL agree.[47]

We support the TRA's finding, which is in line with DGD and VEL's previous submissions of 23 September 2025 and 29 December 2025. HVO is not interchangeable with FAME under normal market conditions. This is further corroborated by the most recent price data, which confirms a persistent and widening price differential between the two products, underscoring their lack of substitutability.

We agree with the TRA's finding that the price difference has continued to increase after the POI and that several months in 2024 were isolated market anomalies driven by exceptional market conditions. The return to normal structural price differences in 2025 and 2026 further confirms that the products are not substitutable or commercially alike. [Confidential: data available under subscription] These price differences confirm that there can be no substitution between HVO and FAME, and that the UK FAME industry would not be able to capture any market in the event that countervailing duties on HVO from the US priced them out of the market. [Confidential: data available under subscription]

Over the longer term, policy structures and fuel specifications necessitate a sustained price premium for HVO, reflecting its higher production costs, broader applicability, and ability to meet tightening regulatory requirements beyond conventional blend limits. As UK and EU obligations continue to rise beyond the FAME blend wall in ultra-low-sulfur diesel, and some countries limit double-counting eligibility increasing the required physical volume of biofuels,[48] demand for HVO will continue to increase accordingly. The net effect is a widening of the FAME and HVO price spread, driven by relatively fixed FAME demand versus structurally growing demand for HVO.

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47 See also: DGD and VEL's previous submissions of 23 September 2025 and 29 December 2025.

48 For example, several EU Member States, including the Netherlands and Germany, have recently implemented restrictions on the double-counting eligibility of certain feedstocks, see e.g. here.

5.2 High-blend end-use

We agree with the TRA's finding that FAME is overwhelmingly not a substitute for HVO in the UK market.

We recall that in the SEF, the TRA acknowledged the lack of interchangeability beyond B7 blends at the forecourt level and that "*at higher blend rates, the interchangeability between FAME and HVO decreases*"[49], and "*in relation to various uses of HVO as a non-road transport fuel for rail, agriculture and maritime applications, as well as the use of HVO as a heating oil for off grid communities* […] *HVO may not be interchangeable with FAME*."[50]

HVO is overwhelmingly used in higher blends, where its technical advantages and drop-in fuel properties are required. It does not compete with FAME, which is chosen for compliance-based B7 blending. FAME is not used in higher blends due to its distinct technical, physical, and chemical properties, and only a negligible portion of infrastructure is capable of handling FAME blends above B7. Therefore, the market realities and technical constraints confirm that HVO and FAME do not compete in either low or high blend segments for road use. [Confidential: data available under subscription]

Blending HVO for B7 blends would not be economically rational, as it would entail a substantial and unnecessary cost increase. In other words, blending HVO into B7 would result in a significant loss of market value for HVO, making such use commercially unviable. As noted by the TRA in TD0004 and TS0005, it is economically rational that blenders will now use exclusively cheaper FAME to satisfy RTFO mandates.[51]

The TRA must also 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.

Therefore, the economic impact of countervailing measures on HVO imported from the US would have an extreme impact on the overwhelming majority of UK users relying on HVO.

5.3 There are no additional sources of supply that would be able to satisfy HVO demand

Further, we support the TRA's finding that there are no alternative sources of supply capable of meeting UK demand for HVO, should countervailing measures be imposed on US imports. As the UK has no domestic HVO production capacity, the UK market is heavily dependent on imports from a limited number of suppliers. It is important to point out that the UK has trade defence measures on HVO imports from China,[52] Argentina,[53] and Indonesia.[54]

As recognised by the TRA in the SEF, the exit of US suppliers would result in "acute impacts" for higher-blend biodiesel users,[55] with the cost of higher blends expected to rise

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49 SEF, para. 103.
50 SEF, para. 96.
51 Para. 185 of Final Recommendation, TD0004; para. 184 of Final Recommendation, TS0005.
52 AD0058 - Biodiesel from China, available here.
53 TS0044 - Biodiesel from Argentina, available here.
54 TS0065 - Biodiesel originating in Indonesia, available here.
55 SEF, para. 598.

disproportionately.[56] This would limit the ability of these users to purchase higher blends, undermining the UK's environmental goals and the competitiveness of UK industry.

In these circumstances, the possibility for UK consumers to switch to alternative non-US sources is extremely limited. No alternative volumes would be available at the scale required to replace US imports without significant market disruption. In practice, the imposition of measures on US HVO would leave Neste as the only supplier of HVO to the UK. This would create a highly concentrated market structure, removing all competitive pressure, increasing supply risk, and weakening security of supply for UK downstream users.

The risks of overreliance on a single supplier were made clear in late 2024, when HVO prices spiked following reduced availability caused by a production suspension following a fire at Neste's plant. [Confidential: data available under subscription]

As such, the impact of countervailing measures on HVO from the US would be significant and would result in an HVO price increase throughout the entire UK, as there would be no alternative source of supply.

5.4 **FAME has higher NOx emissions than HVO**

The TRA wrongly noted that HVO may have higher nitrogen dioxide ("**NOx**") emissions than FAME, which may have an impact on the overall emission levels in the UK.

Contrary to the TRA's assertion, available academic research indicates that FAME has higher NOx emissions than diesel. At the same time, HVO has similar NOx emissions to diesel. For example, Baker Institute explains, "*the presence of oxygen in* [FAME] *influences its combustion, leading to both positive and negative effects.* […] *The higher combustion temperature also increases nitrogen oxide (NOx) emissions, which can contribute to air pollution and acid rain. Estimates suggest that* [FAME] *increases NOx emissions by about 10% compared to petroleum diesel. …* [HVO] *may have an advantage in terms of emissions*".[57]

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[56] SEF, para. 599.

[57] Baker Institute, 'What to Know About Renewable Diesel and Biodiesel', August 19, 2025, available here. The report was authored by Julieta Mariano and Edward M. Emmett, a Fellow in Energy and Transportation at Rice University's Baker Institute for Public Policy.