



Government
of Canada

Gouvernement
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High Commission
of Canada

Haut-commissariat
du Canada

Canada House, Trafalgar Square, London SW1Y 5BJ, United Kingdom

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Trade Remedies Authority
North Gate House
21-23 Valpy Street
Reading
Berkshire RG1 1AF

Re: Government of Canada's Comments on TD0004: Transition anti-dumping review: Biodiesel from United States and Canada and TD0005: Transition anti-subsidy review: Biodiesel from United States and Canada

The Government of Canada ("Canada") appreciates the opportunity to present its views as an interested party in the United Kingdom's transition reviews of the European Union's ("EU") anti-dumping measure imposed by EU Regulation 2015/1518¹ and anti-subsidy measure imposed by EU Regulation 2015/1519.² Canada's interests in these proceedings arise because the EU's measures were extended to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, by EU Regulation 444/2011³ and EU Regulation 443/2011⁴ following circumvention investigations.

At the outset, no measure can be transitioned against imports of biodiesel from Canada unless there is sufficient positive evidence justifying such a result and a properly reasoned and

¹ Commission Implementing Regulation (EU) 2015/1518 of 14 September 2015 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 239, 15.9.2015, p. 69) (hereinafter EU Regulation 2015/1518).

² Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 (OJ L 239, 15.9.2015, p. 99) (hereinafter EU Regulation 2015/1519).

³ Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 12) (hereinafter EU Regulation 444/2011).

⁴ Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20% or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ L 122, 11.5.2011, p. 1) (hereinafter EU Regulation 443/2011).

adequate explanation is provided. The reasons provided for the EU's decision to extend anti-dumping and countervailing duties to goods consigned from Canada indicate that the circumvention findings were based, *inter alia*, on:

- the almost complete collapse of U.S. exports of biodiesel to the EU market after the imposition of anti-dumping and countervailing duties;
- a surge of Canadian exports to the EU market, over the same period;
- a substantial increase in U.S. exports to Canada, exceeding Canadian demand; and
- insufficient Canadian production capacity to produce the biodiesel exported to the EU.⁵

The EU concluded that the evidence “strongly suggests that the surge of imports from Canada to the Union market relates to the export of US biodiesel consigned from Canada”.⁶ Thus, the basis for the EU's decision to extend its measures was a surge of Canadian exports to, and a change in the pattern of trade concerning, the EU Market as a whole. EU Regulation 444/2011 and EU Regulation 443/2011 provide no indication nor refer to any evidence that the European Commission (“Commission”) examined as to whether Canadian exports specifically to the United Kingdom increased after the imposition of anti-dumping and countervailing duties on imports from the United States in 2009. Nor do they refer to whether there was a change in the pattern of trade vis-à-vis the United Kingdom's market.

Absent positive evidence of circumvention via transshipment to the United Kingdom, there is no reasonable basis to transition the EU's anti-circumvention measures to the United Kingdom. On this point, Canada notes that the Trade Remedies Authority does not appear to have gathered the type of data or evidence that permits assessment of whether the underlying EU measures were circumvented via transshipment to the United Kingdom. Canada relies on public questionnaire responses and the Statements of Essential Facts that disclose no data or evidence demonstrating that the original measures were circumvented via transshipment through Canada to the United Kingdom. Therefore, Canada requests that the Category 1 goods set out in the Notice of Initiation be varied so that they no longer include biodiesel from Canada.⁷

Nevertheless, if the Trade Remedies Authority determines that the anti-dumping and anti-subsidy amount should continue to apply to Category 1 goods from Canada, genuine producers of Canadian biodiesel should be exempted. Three Canadian producers of biodiesel⁸

⁵ See EU Regulation 444/2011 at Section 4 and EU Regulation 443/2011 at Section 4.

⁶ EU Regulation 444/2011 at Recital 35. See also EU Regulation 443/2011 at Recital 35.

⁷ Of course, if there are subsequent allegations of circumvention by U.S. producers through Canada after the amounts are varied, the Trade Remedies Authority could conduct a circumvention review to gather data and assess whether there is sufficient evidence that U.S. producers are channelling the consignment of dumped or subsidised goods via Canada.

⁸ BIOX Corporation, Oakville, Ontario, Canada, TARIC additional code B107; DSM Nutritional Products Canada Inc., Dartmouth, Nova Scotia, Canada, TARIC additional code C114; and Rothsay Biodiesel, Guelph, Ontario, Canada, TARIC additional code B108 were excluded from the application of definitive anti-dumping duties on biodiesel by Article 2(1) of EU Regulation 2015/1518 as amended by Article 1 of Commission Implementing Regulation (EU) 2016/676 of 29 April 2016 amending Implementing Regulation (EU) 2015/1518 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 116, 30.4.2016, p. 31) (hereinafter EU Regulation 2016/676) and from the application of

cooperated with the Commission's investigations and were exempted from the application of the EU's anti-dumping and anti-subsidy measures. Similar exemptions were included in the United Kingdom's taxation notices giving effect to the anti-dumping and anti-subsidy amounts following the Secretary of State for International Trade's decision to transition the EU biodiesel measures⁹ and are included in the intended final recommendations set out in the Statements of Essential Facts.¹⁰ Canada agrees that these exemptions should be retained for the following reasons:

- First, Canada respectfully notes that the Commission made no finding that biodiesel of Canadian origin was subsidized or that Canadian producers were dumping biodiesel. The anti-dumping and anti-subsidy measures were only extended to imports consigned from Canada, whether declared as originating in Canada or not, in order to prevent biodiesel originating in the United States from circumventing the EU's anti-dumping and anti-subsidy measures by transshipment to the EU market via Canada.
- Second, during the EU's investigations, each of the exempted Canadian companies demonstrated that they are genuine producers of biodiesel and do not purchase biodiesel from the United States or any other sources.¹¹ As such, they do not present a significant risk of transshipment to the United Kingdom.
- Third, the EU recently completed expiry reviews extending the application of the anti-dumping and anti-subsidy measures imposed under EU Regulation 2015/1518 and EU Regulation 2015/1519. The Commission decided to maintain the exemptions granted to the Canadian biodiesel producers.¹² Should the United Kingdom retain the transitioned EU measures, including imports from Canada, then it should do so in a manner consistent with those continuing EU measures by also continuing the exemptions granted.

definitive countervailing duties on biodiesel by Article 2(1) of EU Regulation 2015/1519 as amended by Article 1 of Commission Implementing Regulation (EU) 2016/675 of 29 April 2016 amending Implementing Regulation (EU) 2015/1519 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 (OJ L 116, 30.4.2016, p. 27) (hereinafter EU Regulation 2016/675).

⁹ See Taxation notice 2020/04: anti-dumping duty on biodiesel originating in the USA (including biodiesel consigned from Canada), 2 June 2021 and Taxation notice: 2020/05: countervailing duty on biodiesel originating in the United States of America (including biodiesel consigned from Canada), 2 June 2021.

¹⁰ See Statement of Essential Facts, Case TD0004: Transition review of anti-dumping measures applying to biodiesel originating in the United States of America and consigned from Canada, at paras. 30 and 385 and Annex 2. See also Statement of Essential Facts, Case TD0005: Transition review of countervailing duties applying to biodiesel originating in the United States of America and consigned from Canada, at paras. 30 and 372 and Annex 2.

¹¹ See EU Regulation 444/2011 at recitals 31 and 96, EU Regulation 2016/676 at recitals 15-19, EU Regulation 443/2011 at recitals 31 and 91 and EU Regulation 2016/675 at recitals 15-19.

¹² See Commission Implementing Regulation (EU) 2021/1267 of 29 July 2021 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 62) at Recital 225 and Article 2 and Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 34) at Recital 145 and Article 2.

In light of the above, imports from Canada should not be subject to the United Kingdom's anti-dumping and anti-subsidy amounts due to the lack of any positive evidence demonstrating circumvention of the original EU measures by transshipment through Canada to the United Kingdom. In the alternative, the exemption granted to Canadian producers should be retained, *mutatis mutandis*, if the Trade Remedies Authority concludes that anti-dumping and anti-subsidy amounts should continue to apply to Canadian biodiesel.¹³ Furthermore, the Trade Remedies Authority should permit other Canadian producers to apply and receive exemptions where they can demonstrate that they are genuine producers of Category 1 goods.

Respectfully submitted,



Nathalie Dubé
Minister-Counsellor and Senior Trade Commissioner

¹³ On this point, we note that references to BIOX Corporation in the Statements of Essential Facts do not reflect the current legal name of the company; BIOX Canada Limited. Canada respectfully request that the Final Recommendations use the company's current legal name.