

**TRANSITION REVIEWS OF THE EU ANTI-DUMPING AND COUNTERVAILING  
MEASURES APPLICABLE TO IMPORTS OF BIODIESEL ORIGINATING IN THE UNITED  
STATES OF AMERICA (TD0004 & TS0005)**

**RENEWABLE TRANSPORT FUEL ASSOCIATION'S COMMENTS  
TO DIAMOND GREEN DIESEL'S REQUEST TO EXCLUDE RENEWABLE DIESEL FROM  
THE PRODUCT SCOPE OF THE CURRENT REVIEW INVESTIGATIONS**

**1. INTRODUCTION**

1. The Renewable Transport Fuel Association (“RTFA”) represents the interests of producers and suppliers of renewable transport fuels companies in the UK including all major biodiesel producers. The RTFA seeks to promote and protect the jobs of UK-based renewable and low carbon fuel producers and those within the supply chain, and supports a level playing field with respect to imports, through a trade remedy policy which is not protectionist but prevents UK manufacturers from being exposed to unfair trade practices. According to RTFA’s estimates, biodiesel producers and members of the RTFA represent 100 % of the total UK biodiesel production.
2. By this submission, the RTFA wishes to react to Diamond Green Diesel’s submission dated 5 January 2021 in which it requests the exclusion of renewable diesel from the product scope of the current review investigations.
3. According to Diamond Green Diesel (“DGD”), “*“biodiesel” and “renewable diesel” cannot be considered as “like” within the meaning of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulation 2019<sup>1</sup>.”*<sup>2</sup> To support its position, DGD alleges that renewable diesel has different physical, chemical and technical characteristics, a different production process, a longer storage period and a higher price compared to biodiesel<sup>3</sup>. Finally, maintaining protective measures on renewable diesel would be, for DGD, against the UK’s ambitious Greenhouse Gas (GHG) reduction targets<sup>4</sup>.
4. In its Guidance document on transition review, the Department for International Trade indicates that it may find the original scope as published in the Notice of Determination is not appropriate for a UK-specific measure but clarifies that:

*“When we are deciding whether to revise the scope of a transition review, we will consider whether we would have initiated a review with the revised scope if the relevant information had been*

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<sup>1</sup> As amended by the Trade Remedies (Amendment) (EU Exit) Regulations 2019, the Trade Remedies (Amendment) (EU Exit) Regulations 2020, and the Trade Remedies (Amendment) (EU Exit) (No.2) Regulations 2020.

<sup>2</sup> See para. 1, page 1 of Diamond Green Diesel’s submission dated 5 January 2021.

<sup>3</sup> See para. 2, page 1 of Diamond Green Diesel’s submission dated 5 January 2021.

<sup>4</sup> See paras. 2-4, page 1 of Diamond Green Diesel’s submission dated 5 January 2021.

*available. We will also consider whether the proposed revision may prejudice the interests of any interested party or contributor.[...]”.*

5. The RFTA firmly opposes DGD’s request to exclude renewable diesel from the product scope of the current review investigations as the conditions to revise the product scope in the present cases are not met for the following reasons:
  - This product exclusion request is not based on any solid legal grounds: the ‘likeness test’ made by DGD is irrelevant in the present cases and it is unlikely that the Trade Remedies Investigations Directorate would have initiated a review with the revised scope if the relevant information had been available; (2)
  - DGD is wrong when it affirms that there are no existing or planned levels of renewable diesel production in the UK; (3)
  - Any exclusion of renewable diesel from the product scope of the current review investigations will severely prejudice the interests of the entire UK biodiesel industry (4).

## **2. DGD’S REQUEST TO EXCLUDE RENEWABLE DIESEL FROM THE PRODUCT SCOPE IS NOT BASED ON ANY SOLID LEGAL GROUNDS**

6. DGD’s request to exclude renewable diesel from the product scope of the current review investigations is not based on any solid legal grounds for two main reasons:
  - the “likeness test” made by DGD between FAME biodiesel and renewable diesel is legally irrelevant in the definition of a product scope and thus in the assessment of this product exclusion request (2.1);
  - It is unlikely that the Trade Remedies Investigations Directorate would have initiated a review with the revised scope if the relevant information had been available (2.2).

### **2.1 The “likeness test” made by DGD between FAME biodiesel and renewable diesel is legally irrelevant in the definition of a product scope**

*The product scope is biodiesel, irrespective of its raw materials or production process*

7. Biodiesel is a fossil free alternative to conventional diesel. Biodiesel can be produced from many different feedstocks (from edible oil feedstocks, waste, to various types of non-food biomass such as the biogenic component of used tyres) and from different production processes (e.g. transesterification<sup>6</sup> ; hydro-treatment (either in a dedicated production facility, or via co-processing – also commonly known as ‘renewable diesel’<sup>7</sup>) ; biomass to liquid<sup>8</sup> (BTL); or gas to liquid (GTL)).

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<sup>5</sup> Website of the Department for International Trade, Guidance, “*How we carry out transition reviews into EU measures*” (<https://www.gov.uk/government/publications/the-uk-trade-remedies-investigations-process/how-we-carry-out-transition-reviews-into-eu-measures>).

<sup>6</sup> Transesterification is a chemical reaction used for the conversion of triglycerides (fats) contained in oils (Feedstocks) into usable biodiesel.

<sup>7</sup> Hydrotreatment in a dedicated production facility is also called HVO. Hydrogenation of oils involves hydrotreating and de-oxygenation to produce a renewable diesel. Hydro-treatment via co-processing in a conventional refinery only involves only hydrotreating the oils which renders the fuel less versatile. Hydro-treatment in a dedicated production facility or hydro-treatment via co-processing in a conventional refinery results in a product which is chemically identical.

<sup>8</sup> Biomass to liquid is a multi-step process of producing synthetic hydrocarbon fuels made from biomass via a thermochemical route. It is another way to manufacture biodiesel.

8. Biodiesel is an evolving product. The ‘first generation of biodiesel’ refers to biodiesel made from vegetable oils<sup>9</sup>. The ‘second generation of biodiesel’ refers to biodiesel made from various types of non-food biomass. Biomass means for example crops, residues or animal waste used as a source of fuel. Since this second-generation of biodiesel is made from different feedstocks, it may require different technology to extract energy from them. Therefore, the second generation of biodiesel both refers to 'advanced' technology used to process feedstocks into biodiesel (e.g. hydro-treatment and BTL), but also the use of non-food crops, biomass and wastes as feedstocks in 'standard' biodiesel processing technologies if suitable. Experts already refer to the ‘third generation of biodiesel’ which is obtained from microalgae biomass that possess high productivity of lipids, which after extraction are trans-esterified to obtain biodiesel. There is also a non-biological route to renewable diesel production, where renewable hydrogen is reacted with CO<sub>2</sub> to make methane (CH<sub>4</sub>) and the Fischer Tropsh reaction is used to make longer chain hydrocarbons from the methane.
9. All types of biodiesel in the USA – including renewable diesel – have been heavily subsidized. Therefore, the product scope defined in the original 2008/2009 investigation covered all types of biodiesel imported from the USA, as follows:

*“Fatty-acid mono-alkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as ‘biodiesel’, in pure form or in a blend containing by weight more than 20 % of fatty-acid monoalkyl esters and/or paraffinic gasoil obtained from synthesis and/or hydro-treatment, of non-fossil origin<sup>10</sup>”.* (emphasis added)

10. DGD is wrong when it affirms that the “*European Commission did not specifically examine whether ‘renewable diesel’ and ‘biodiesel’ can be considered like products<sup>11</sup>*”. During the original investigation, the EU Commission confirmed that:

*“[A]ll types of biodiesel and the biodiesel in the blends covered by this investigation, despite possible differences in terms of raw material used for the production, or variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it<sup>12</sup>”* (emphasis added).

11. Such a conclusion was re-confirmed by the EU Commission during the 2015 expiry review investigation on biodiesel imports from the USA with respect to “**diesel produced from biomass**”. During this investigation, the US Government claimed that diesel produced from biomass is a category of products broader than the product under review. However, the EU rejected this claim by the US Government and concluded that “*as set out in the Regulation imposing provisional countervailing duties in the original investigation, all types of biodiesel and biodiesel blends, including diesel produced from biomass, are considered to be biodiesel fuels and are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels. The*

<sup>9</sup> E.g. rapeseed oil, soybean oil, palm oil.

<sup>10</sup> See recital (19) of Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America, OJ L 179/26, 10.07.2009. This product scope has remained unchanged since the original investigation. However, for the sake of completeness, it should be noted that due to circumvention practices, the EU Commission extended the AD/AS measures on imports of biodiesel consigned from Canada and on imports of biodiesel in a blend containing by weight 20 % or less of biodiesel from the USA.

<sup>11</sup> See page 3 of Diamond Green Diesel’s submission dated 5 January 2021.

<sup>12</sup> Council Regulation (EC) No 599/2009 of 7 July 2009, op. cit., Recital (23).

*reason is that biodiesel produced from biomass has the same or very similar basic physical and technical characteristics and uses as biodiesel produced from other sources*<sup>13</sup>.

***The likeness test is not relevant to define the product scope***

12. In its submission dated 5 January 2021, DGD requested the exclusion of renewable diesel from the product scope of the current review investigations on the basis that “*biodiesel’ and ‘renewable diesel’ cannot be considered as “like” within the meaning of The Trade Remedies (Dumping and Subsidization) (EU Exit) Regulations 2019*<sup>14</sup>”.
13. DGD misuses the likeness test which is not relevant in the present cases. The likeness test aims at assessing whether biodiesel manufactured in the UK is “like<sup>15</sup>” with the product concerned (i.e. biodiesel manufactured in the USA, namely FAME biodiesel and renewable diesel). This test should be distinguished from that used to define the range of products included in the product scope.
14. To the best of the RTFA’s knowledge, there is nothing in the legislation, to be read in the light of the WTO AD Agreement, which would support the idea of a specific requirement for homogeneity or similarity between the products in a product scope. In the same vein, the WTO case-law has never ruled upon the question whether the range of products in a product scope should align with the boundaries set by the notion of like products and refused to do so. Thus, in *Korea – Certain Paper (2005)*, the panel ruled that:

*“In the investigation at issue, the KTC determined the “the product under consideration” to be PPC and WF. The KTC also determined that the definition of the domestically produced PPC and WF was identical to the definition of the PPC and WF imported from Indonesia. It follows that the KTC’s like product definition was consistent with the provisions of Article 2.6. [...] Indonesia argues that the KTC had to determine that PPC and WF were like products. We note that these two, together, constituted “the product under consideration” in the investigation at issue. We see no basis in Article 2.6 for the proposition that the like product definition also applies to the definition of “the product under consideration”. We are aware of no provision in Article 2.6, or any other article in the Agreement, that contains a definition of “the product under consideration” itself. In any event, we note Indonesia’s statement that it is not challenging the KTC’s determination regarding “the product under consideration”<sup>16</sup>” (emphasis added).*

15. The Panel, in *EC — Salmon (2007)* reiterated that:

*“Moreover, Norway’s position would result in the absurd situation of requiring fragmentation of the product under consideration, and a consequent fragmentation of the like product, and ultimately the domestic industry, which would render the possibility of imposing dumping duties consistent with the AD Agreement a nullity. We see nothing in Article 2.6, which as discussed, defines “like product”, which would support this view. In this regard, it is noteworthy that, while the AD Agreement specifically defines “like product” by requiring a comparison between domestically produced (or foreign) goods and the imported products that are the subject of the investigation, there is no specific*

<sup>13</sup> See Recital (37) of 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 239/69, 15.09.2015.

<sup>14</sup> See para. 1, page 1 of Diamond Green Diesel’s submission dated 5 January 2021.

<sup>15</sup> The term like product means a product that is identical, i.e. alike in all respects, to the product under consideration, or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration. This definition follows the WTO AD Agreement.

<sup>16</sup> WTO Panel, *Korea – Anti-dumping duties on imports of certain paper from Indonesia (WT/DS312)*, 28 October 2005, paras. 7.220 and 7.221.

*definition of "product under consideration". In our view, the very fact that there is a definition of like product in the AD Agreement indicates that Members were well able to define terms carefully and precisely when considered necessary. The absence of a definition of product under consideration indicates that no effort was undertaken in that regard. In our view, this consideration supports the conclusion that it would be absurd to impose the definition of like product from Article 2.6 onto the undefined term product under consideration. We simply see no basis in the text of Articles 2.1 and 2.6 for the obligations Norway seeks to impose on investigating authorities with respect to product under consideration<sup>17</sup>*" (emphasis added).

***In defining the product scope, account may be taken of a number of factors but there are no factors that are more decisive than others***

16. In defining the product scope, a number of factors may be taken into account, but there are no factors that are more decisive than others. Thus, in the present cases:
- The fact that renewable biodiesel and FAME biodiesel can be chemically different, have different production processes or have different storage periods are not determinant criteria in the product scope assessment: Biodiesel is made from different feedstocks that each have different properties. Therefore, all types of biodiesel **may have different technical or chemical characteristics**. The RTFA does not dispute that FAME and renewable diesel have a different production process. However, as concluded in the original investigation on biodiesel imports from the USA, "*all types of biodiesel and the biodiesel in the blends covered by this investigation, despite [...] variances in the production process, have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product concerned do not alter its basic definition, its characteristics or the perception that various parties have of it<sup>18</sup>*".
  - The fact that renewable diesel and FAME biodiesel can have different prices is also not determinant in defining the range of products included in the product scope: FAME biodiesel and renewable diesel may have different prices but they are all used for the same purpose, namely to be a fossil free alternative to conventional diesel for the purposes of decarbonisation. Renewable diesel and FAME biodiesel are **incentivised under exactly the same mechanism in the UK** – the Renewable Transport Fuels Obligation (RTFO) – even though the level of incentives can vary among the different types of biodiesel to favour those with highest GHG savings<sup>19</sup>. The RTFO is the legal instrument designed to implement the Renewable Energy Directive (RED) and RED II. All types of biodiesel manufactured in the USA are heavily subsidized and are thus highly detrimental to the UK biodiesel industry;
  - DGD fails to address the **competition of products** in its submission dated 5 January 2021 which is however a particularly important consideration in the product scope definition. In the present cases, biodiesel imported from the USA strongly competes with biodiesel manufactured in the UK. It is also worth noting that FAME biodiesel and renewable diesel compete in the same market as direct competition: they are interchangeable to meet the RTFO objectives.
  - FAME biodiesel or renewable diesel manufactured in the USA are both heavily subsidized.

<sup>17</sup> WTO Panel, European Communities – Anti-dumping duties on farmed salmon from Norway (WT/DS337), 16 November 2007, paras. 7.59.

<sup>18</sup> Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America, OJ L 179/26, 10.07.2009, Recital (23).

<sup>19</sup> For example, under the RTFO, "development fuels" are treated differently than other types of biodiesel.

17. Given the above, all types of biodiesel shall remain in the product scope of the current review investigations.

**2.2 It is unlikely that the Trade Remedies Investigations Directorate would have initiated a review with the revised scope if the relevant information had been available**

18. The RTFA considers that Trade Remedies Investigations Directorate (TRID) would have not initiated a review with the revised scope if the relevant information had been available. Indeed, for a review to be initiated, an applicant should provide sufficient evidence that the current situation has evolved compared to the previous situation, which would justify a request for a modification of the product scope.

19. In the present cases, DGD has not provided any *prima facie* evidence showing that the current situation has changed compared to the situation examined in the original investigation. In the present cases, the situation has not changed since the original 2008/2009 investigation: US biodiesel – including renewable diesel – is still as subsidized as in the past.

20. US biodiesel – including renewable diesel – is subsidized both at the federal and state levels. The main federal subsidy granted to the US biodiesel industry is the Biodiesel Tax Credit. In its current form, qualified taxpayers may claim the tax credit, at \$1.00 per gallon (i.e. **£296/tonne of renewable diesel or £262/tonne of FAME<sup>20</sup>**), when the required amount of biodiesel is blended with petroleum diesel for sale or use in a trade or business.

21. As indicated in Title 26, Section 40A (f) of the US Code (USC), the Biodiesel Tax Credit applies to both FAME biodiesel (known as traditional ‘*biodiesel*’ in the US) and renewable diesel:

*“(f) Renewable diesel*

*For purposes of this title—*

*(1) Treatment in the same manner as biodiesel*

***Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.***

*[...]*

*(3) Renewable diesel defined*

*The term “renewable diesel” means liquid fuel derived from biomass which meets —*

*(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and*

*(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary. [...]<sup>21</sup>”. (emphasis added)*

22. The Biodiesel Tax Credit was created under the American Jobs Creation Act of 2004. While it was due to expire on 31 December 2009, it has been instead repeatedly reinstated retroactively until now<sup>22</sup>.

<sup>20</sup> 1 gallon = 3,7854 liters. 1136 litres = 1 tonne. Thus, 1\$/gallon = (1/3,7854\*1136) = 300 \$/MT. renewable diesel density (around 0.78kg/l) is lower than that of FAME (around 0.88kg/l).

<sup>21</sup> Under 26 USC § 40A(d)(1), Biodiesel means: “*monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet —*

*(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and*

*(B) the requirements of the American Society of Testing and Materials D6751. [...]*”.

<sup>22</sup> In total, this subsidy scheme has expired six times since 2005 and was always eventually retroactively reinstated.

Recently, the 1\$/gallon subsidy has been reinstated by the Further Consolidated Appropriations Act by the U.S. Congress on 20 December 2019 **until 31 December 2022**<sup>23</sup>.

23. This recent 5-year extension under the Consolidated Appropriations Act is the longest extension provided since the implementation of this subsidy scheme. As noted by the Biodiesel Magazine in a press release dated 20 December 2019, “*Never in its 15-year history has the biodiesel tax credit been given such a long duration*<sup>24</sup>”.
24. New biodiesel subsidies are also available to the US biodiesel industry: as announced by the Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS) – a Rural Development agency of the United States Department of Agriculture (USDA) – the Higher Blends Infrastructure Incentive Program (HBIIP) provides up to \$100 million in competitive grants to eligible entities for activities designed to expand the sales and use of renewable fuels<sup>25</sup> and these grants are available since January 2021.
25. The massive subsidies have encouraged the US biodiesel industry to **significantly increase renewable diesel capacity**. In an article dated 12 January 2021, Biodiesel Magazine reported a significant increase of the US production capacity of renewable diesel due to the \$1/gallon subsidy, which could soon reach 5,5 billion gallons, i.e. 16,5 million tonnes:

*“The appeal of stacking the \$1-per-gallon biodiesel tax credit on top of California’s Low Carbon Fuel Standard credits, while reducing RIN exposure for those that have it, has encouraged a race for renewable diesel production capacity that will likely transform America’s biomass-based-diesel industry over the next few years. [...] As 2020 expired, Biodiesel Magazine was aware of four operational renewable diesel plants in the United States: the two expanding facilities, capable of producing 90 MMgy and 275 MMgy prior to upsizing; a newly commissioned 184 MMgy plant in North Dakota; and a 4 MMgy unit in Kansas. That existing 553 MMgy of capacity, while impressive by itself, will soon be eclipsed by six more renewable diesel plants under construction, plus the expansions. Altogether, this first big wave of construction represents over 2 billion gallons of biobased-diesel capacity. And what’s poised to come next could be even more extraordinary. At least five additional proposed renewable diesel facilities—each of them massive—represent another 3.3 billion gallons of potential capacity. Altogether, the 14 facilities in this overview represent nearly 5.5 billion gallons of new or potential capacity, which is double the U.S. biodiesel industry’s current size. It will take years to know how much renewable diesel capacity is ultimately built out, and what impact it has on North America’s current fleet of 100-plus operational biodiesel plants, but it is increasingly clear that the biobased-diesel industry’s two segments—sharing markets, incentives and feedstock—are veering toward unification, politically and logistically<sup>26</sup>” (emphasis added).*

26. With this massive biodiesel capacity, US biodiesel producers will be looking aggressively for export outlets, including the UK market. In this respect, DGD have already made it clear that their new capacities would be directed towards Europe to supply customers with unfair US unfair renewable diesel.

*“[DGD will] **expand its annual production capacity of renewable diesel** using Honeywell UOP’s Ecofining process technology **to meet growing demand for renewable fuels in North America and Europe.** [...] ‘Demand has steadily increased for renewable diesel in the United States, Canada and*

<sup>23</sup> IEA, Press release, 28 January 2020, “U.S. biomass-based diesel tax credit renewed through 2022 in government spending bill”, Annex 1.

<sup>24</sup> Biodiesel Magazine, “Historic 5-year extension of biodiesel tax credit signed into law”, 20 Dec. 2019, Annex 2.

<sup>25</sup> See Federal Register, Solicitation of Applications for the Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2021, Annex 3.

<sup>26</sup> Biodiesel Magazine, “Renewable Diesel’s Rising Tide”, 12 January 2021, Annex 4.

*Europe as advanced biofuel mandates seek to reduce greenhouse gas emissions,' said Jim Andersen, senior business leader of Honeywell UOP's Renewable Energy and Chemicals business. "With the expansion of its facility using our Ecofining technology, Diamond Green Diesel will continue to meet growing demand for low-carbon fuels, and become one of the largest plants in the world for producing those fuels"*<sup>27</sup> (emphasis added).

27. Any exclusion of renewable diesel from the product scope of the current review investigations would thus lead to an immediate recurrence of unfair practices from US biodiesel exporting producers on the UK market. The US biodiesel industry is as subsidized as ever (perhaps even more than during the original investigation) and there are no solid evidence brought by DGD that would justify an exclusion of renewable diesel from the product scope in the present cases.

### **3. DGD IS WRONG WHEN IT AFFIRMS THAT THERE ARE NO EXISTING OR PLANNED LEVELS OF RENEWABLE DIESEL PRODUCTION IN THE UK**

28. DGD is wrong when it affirms that *"there are no existing or planned levels of "renewable diesel" production in the UK"*<sup>28</sup>. There is already production of renewable diesel in the UK and it is expected that the UK production will further develop in the near future.

29. Phillips 66 is a US based company which transports, stores and markets fuels and products globally. It has an oil refinery in the UK at the Humber, where it co processes used cooking oil into renewable diesel<sup>29</sup>.

30. Phillips 66 plans to quadruple its renewable diesel production in the UK by mid-2021 as plant upgrade begins<sup>30</sup>. The new UCO module will increase Humber's renewable diesel capacity to 3,000 barrels per day (120 000 tonnes/year<sup>31</sup>) from 1,000 BPD (40 000 tonnes/year) by January 2021. Thus, by mid-21, Phillips 66 will bolster its position in the UK. Plans are in the works to further expand capacity to 5,000 BPD by 2024 (196 000 tonnes/year).

31. As the UK government is actively encouraging the production of advanced biofuels, other biodiesel producers have invested in advanced biodiesel. Thus, in January 2021, Greenergy announced its continued commitment to renewables through an investment in advanced biofuels. Utilising a combination of existing technologies, the project will create low carbon fuels from waste tyre feedstock. The project will utilise pyrolysis and hydrotreating technologies to convert waste tyres into renewable drop-in advanced biofuels that can be used in diesel and petrol and qualify as development fuels under the UK's Renewable Transport Fuel Obligation. The plant will also have the capability to produce sustainable aviation fuel (SAF)<sup>32</sup>.

32. It is highly likely that many other UK companies are looking to invest in the production of advanced biodiesel to meet the UK's climate targets<sup>33</sup>.

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<sup>27</sup> See Biomass Magazine, *"Diamond Green Diesel to expand capacity with Honeywell technology"*, 2 October 2019, Annex 5.

<sup>28</sup> See page 6 of Diamond Green Diesel's submission dated 5 January 2021.

<sup>29</sup> Fuel Oil News, Press release, *"Significant expansion of biofuels capacity for Phillips 66"*, Annex 6.

<sup>30</sup> Energy Census, Press release, *"Phillips 66 to quadruple HVO production in UK by mid-2021 as plant upgrade begins"*, 24 August 2020, Annex 7.

<sup>31</sup> 1 barrel of renewable diesel = 124 liters; 1 tonne of biodiesel = 1136 liters.

<sup>32</sup> Greenergy, Press release, *"Greenergy invests in advanced biofuels project"*, 18 January 2021, Annex 8.

<sup>33</sup> The RTFA is aware that there is significant interest in developing HVO production plants in the UK, and in producing pyrolysis oils that can be processed directly as in the Greenergy project described above (or co-processed with fossil feedstocks).



**4. ANY EXCLUSION OF RENEWABLE DIESEL FROM THE PRODUCT SCOPE OF THE CURRENT REVIEW INVESTIGATIONS WILL SEVERELY PREJUDICE THE INTERESTS OF THE ENTIRE UK BIODIESEL INDUSTRY**

33. Any exclusion of renewable diesel from the product scope of the current review investigations will severely prejudice the interests of the entire UK biodiesel industry.
34. The UK is one of the most successful countries in utilising wastes for biofuels. As a direct result of policy, significant investments have been made to manufacture biodiesel in the UK from all sorts of wastes, that often otherwise end up in landfills.
35. FAME biodiesel and renewable diesel compete in the same market as **direct competition**: they are mostly a substitute for one another to meet the RTFO objectives.
36. Given the fungibility between FAME and renewable diesel and the size of the UK market in comparison with the US renewable diesel capacity, any exclusion of renewable diesel from the product scope of the current review investigations will corner the market across the whole of the UK.
37. US renewable diesel producers receives a subsidy of 340 US\$/MT under the Biodiesel Tax Credit. The freight costs from the US to the UK is estimated at around 50 US\$/MT. Therefore, without considering other subsidies granted to the US biodiesel industry in addition to the Biodiesel Tax Credit, the price advantage for US biodiesel producers is approximately 290 US\$/MT. Such a price advantage could allow US renewable diesel to compete with certain FAME biodiesel. The FAME industry would no longer be able to offer their products and every tonne of US renewable diesel imports will progressively replace one tonne of UK biodiesel production.
38. In 2019, the UK biodiesel consumption amounted to around 1,5 million tonnes<sup>34</sup>. As explained above, the US renewable diesel biodiesel capacity should soon reach 16,5 million tonnes. In its response to register as a contributor to the case dated 14 September 2020, DGD reported that its production facility in Louisiana (USA) was currently undergoing an expansion to increase the renewable diesel production capacity of the plant. According to DGD, the new production capacity should become operational at the end of 2021 and will amount to almost 2 million tons per year. DGD's new capacity at the end of 2021 will, alone, already largely exceed the total UK biodiesel consumption<sup>35</sup>.
39. Any exclusion of renewable diesel from the product scope would thus not reduce costs for UK consumers as alleged by DGD. It would simply place on the UK market US unfair renewable diesel that would lead to the rapid disappearance of the UK biodiesel industry with proportional job losses and would scrap any planned investments into increasing capacity of UK biodiesel production.
40. Investments could transfer to the USA or the EU and the biodiesel R&D in the UK would halt, possibly transferred to EU. Planned investments into co-processing in the UK would be unjustifiable and there would no longer be investment in renewable diesel production facilities in the UK. In the same vein, planned investments into Recycled Carbon Fuels in the UK would be scrapped. UK supply of waste raw materials would be exported for value to be added, most likely in the EU. Waste tallow in the UK which has to be produced by law (ABPR) and is currently utilised in UK biodiesel, would lose what is practically its only outlet. This would create a health risk if the high risk (category 1) tallow cannot be disposed of safely. UK biodiesel producers would seek export opportunities but

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<sup>34</sup> 1,598 million liters according to the Digest of UK Energy Statistics 2020 (1 tonne of biodiesel = 1136 liters), see *Annex 9*.

<sup>35</sup> See DGD's response to Section A, Response to register as a contributor to the case, 14 September 2020.

would suffer from the added freight costs making it less competitive with EU production and would also be exposed to unfair competition from the USA on export markets.

41. In view of the above, DGD's request to exclude renewable diesel from the product scope of the current review investigations is an attempt to undermine the effectiveness of the duties in place to the detriment of the UK biodiesel industry.

**5. CONCLUSION**

42. It results from the above that DGD's request to exclude renewable diesel from the product scope of the current review investigations is legally unfounded and if granted, will significantly prejudice the interests of the entire UK biodiesel industry.
43. While the UK market shall remain open to imports that fairly compete with UK products, dumped and subsidized imports that cause injury to the UK industry cannot be tolerated. In the present case, US renewable diesel is heavily subsidized. Any exclusion of this product from the product scope will thus create a loophole in the protection put in place against unfair imports of biodiesel from the USA and will lead to an immediate recurrence of US unfair biodiesel imports, thereby negatively affecting again the entire UK biodiesel industry.

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