Transition review of the EU anti-dumping and countervailing measures applicable to imports of biodiesel originating in the United States of America (TD0004 & TS0005)

Diamond Green Diesel

Follow-up submission relating to Olleco and Greenergy's submission with further information on the goods subject to review of 22 February 2021

1. On 5 January 2021, Diamond Green Diesel ("**DGD**") filed a submission relating to the product scope of the investigation with the UK Trade Remedies Investigations Directorate ("**TRID**"). In its submission, DGD maintained that FAME biodiesel and renewable diesel (often referred to as hydrotreated vegetable oil or "HVO" or hydrogenation derived renewable diesel or "HDRD") are not like products and that renewable diesel should be excluded from the scope of the transition review and potential measures imposed by TRID at the conclusion of its investigations.

2. On 8 February 2021, TRID sought additional information from interested parties on the goods subject to review. Greenergy and Olleco, both UK producers of FAME biodiesel, responded to TRID's requests for comments alleging that DGD's information was false.

3. DGD considers that the following assertions made by Greenergy and Olleco are groundless and unsupported by evidence.

   (a) There is UK production of renewable diesel and further significant investments are expected in the very near future.

   (b) Renewable diesel and FAME biodiesel compete in the same market and are interchangeable to meet RTFO objectives and thus, any exclusion of renewable diesel from the product scope will cause severe injury both to UK renewable diesel producers and to UK FAME biodiesel producers.

   (c) U.S. subsidies to renewable diesel producers enable them to practice unfair trade which can be highly detrimental to the UK biodiesel industry.

4. With respect to the existence of UK production of renewable diesel, point (a), DGD notes that the sole supporting material referred to by Greenergy and Olleco is a submission by the Renewable Transport Fuel Association ("**RTFA**") of 20 November 2021. In its submission, RTFA mentions that U.S. imports may deter early investors in the UK and that the government is encouraging investment in renewable diesel but it does not contain any data demonstrating that there is currently UK production of renewable diesel.

5. Furthermore, the RTFA submission does not demonstrate nor do Greenergy or Olleco provide evidence that significant investments to establish production facilities for renewable diesel are expected in the near future. The U.S. Department for Agriculture ("**USDA**") 2020 GAIN Biofuels Report clearly shows there is no current production for renewable diesel in the UK.[1] The table below, taken from page 33 of the report, indicates there is only FAME biodiesel production in the UK. It is worth noting that tor the purpose of the USDA Gain Biofuels Report the UK was still considered to be part of the EU, which is confirmed by the UK being listed under EU FAME biodiesel production. The fact that the UK is not included

[1] Please see attached as **Annex 1**.

in the table for EU production for renewable diesel indicates there is no UK production of renewable diesel.

Table 7. EU FAME Main Producers (Million Liters)

Calendar Year	2012	2013r	2014r	2015r	2016r	2017r	2018r	2019e	2020f
Germany	3,106	3,307	3,808	3,505	3,543	3,644	3,578	3,862	3,300
France	2,175	2,170	2,386	2,866	3,152	3,135	2,806	2,556	2,045
Spain	538	659	1,017	1,103	1,319	1,721	2,008	1,835	1,600
Poland	673	736	786	861	985	1,019	1,000	1,091	1,110
Netherlands	974	790	1,056	795	638	1,112	1,022	1,079	1,080
UK	352	640	554	572	496	490	500	510	510
Italy	326	521	452	625	398	599	511	511	450
Other	1,214	1,638	1,179	1,600	2,229	1,516	1,077	1,669	2,443
Total	**10,422**	**10,460**	**11,238**	**11,927**	**12,760**	**13,236**	**12,504**	**13,113**	**12,543**

Ranked by production in 2020 r = revised / e = estimate / f = forecast. Source: FAS EU Posts based on information in MT and converted to liters using a conversion rate of 1 MT = 1136 liters.

Table 8. EU HDRD Production (Million Liters)

Calendar Year	2012	2013	2014	2015	2016r	2017r	2018r	2019e	2020f
Netherlands	410	872	1,013	1,192	1,154	1,218	1,218	1,218	1,218
Italy	0	0	323	323	323	323	323	451	590
Spain	73	179	377	262	418	465	482	549	480
France	0	0	0	0	0	0	0	128	449
Finland	317	392	438	533	135	383	354	385	385
Sweden	160	160	160	160	160	160	192	218	256
Portugal	0	0	0	0	0	32	37	37	35
Total	**960**	**1,604**	**2,311**	**2,470**	**2,190**	**2,582**	**2,606**	**2,986**	**3,412**

Ranked by production in 2020 e = estimate / f = forecast. Source: FAS EU Posts based on information in MT and converted to liters (conversion rate of 1 MT = 1282 liters).

6. The USDA GAIN Report on Biofuels is considered to be a reliable source for information on the EU and U.S. biodiesel industry. The production and consumption figures in the report are based on official statistics such as Eurostat. The European Biodiesel Board, the complainant in various EU biodiesel investigations, relies on the USDA GAIN Report on Biofuels for data.[2]

7. We would note that earlier this year, Greenergy announced the development of an "advanced biofuels project" at the Thames Enterprise Park[3], which will utilise pyrolysis technology to produce tyre derived oil ("**TDO**") from complex wastes for advanced drop-in biofuels, alongside the production of sustainable aviation fuel. Such a project, however, involves an entirely different process and yield than the biodiesel or the paraffinic gasoil currently within the scope of the TRID investigation. Greenergy's press release states that their TDO would qualify for prized 'development fuel' credits ("**dRTFC**"), which arise under a separate compliance mandate than the main RTFO scheme.[4] In any event, renewable diesel does not qualify as a 'development fuel' and would not compete with Greenergy's TDO.[5]

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2 See for example, recital (6) of Commission Implementing Regulation 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina whereby the European Commission refers to the USDA GAIN Report as a source in the complaint lodged by the European Biodiesel Board.

3 https://www.greenergy.com/greenergy-invests-in-advanced-biofuels-project

4 Please see Article 3 (2C) and Article 17 (3) to (5) of the Renewable Transport Fuel Obligations Order ("**RTFO**") 2007 No. 3072, as amended; available at: https://www.legislation.gov.uk/uksi/2007/3072/contents.

5 The RTFO scheme works by setting annual obligations on suppliers, increasing from 9.75% in 2020 to 12.4% in 2032, which can be met by supplying renewable fuel or purchasing renewable transport fuel certificates ("RTFC") from other suppliers. RTFCs are issued to suppliers of sustainable transport fuel and this trading mechanism obligates suppliers to meet their obligation in a cost-effective manner. An alternative is for suppliers to pay a fixed sum for each litre of fuel

8. Greenergy and Olleco's claims that there currently exists a domestic renewable diesel industry in the UK might also be taken as a reference to the practice amongst conventional refiners to introduce used cooking oil ("**UCO**"), mixed in small quantities, into their fossil feedstocks in order to generate biofuel credits. We understand this process is occurring at Phillips 66's Humber Refinery and has also been trialled at other UK refinery sites. These resulting products will physically contain some renewable content, however these fuels are not renewable diesel.

9. DGD has addressed points (b) and (c) in its own response to the Addendum to the questionnaire with questions relating to product scope of 22 February 2021. As such, DGD will only briefly reiterate its arguments in this regard.

10. With regard to the argument of renewable diesel and FAME biodiesel competing on the same market and being interchangeable for meeting RTFO obligations, it is essential to note that:

    (a) The market for FAME in the UK is saturated due to the blend limit of 7% for FAME. In order to meet increasing greenhouse gas ("**GHG**") reduction goals for transportation fuels, renewable diesel is needed.

    (b) There is a unique market for renewable diesel for clients who out of preference, or compliance, desire to have a larger share of renewable fuels in their fuel blends. Superior cold flow performance, higher cetane values, and an overall better GHG emissions profile further distinguish renewable diesel from FAME. For example, in very cold climates, renewable diesel blends will be preferred or even necessary, whereas FAME biodiesel does not allow for very cold weather circumstances.

    (c) FAME cannot compete with the product qualities of renewable diesel. Renewable diesel could physically replace FAME, but FAME, due to blend level restrictions and inferior quality, could not replace renewable diesel. In essence, renewable diesel is used to produce a finished fuel product with a higher component of renewable inputs, whereas FAME is used as a cost effective blend stock. From a price-point perspective, renewable diesel cannot compete with FAME biodiesel. Up to the blend limit of 7%, renewable diesel will never replace FAME biodiesel because FAME biodiesel is cheaper.

11. As for subsidization of renewable diesel in the U.S., the issue is not whether U.S. renewable diesel production falls in the scope of the U.S. Blender's Credit but whether the Blender's Credit allows renewable diesel to price out FAME biodiesel from the UK market. Renewable diesel is more expensive than FAME biodiesel and the benefit from the U.S. Blender's Credit does not reduce the price difference between the two products. As such, any potential benefit provided by the Blender's Credit in the U.S. is not relevant in the sense that it will not make a difference in the fact that renewable diesel will continue to be more expensive than FAME biodiesel and that there will always be demand for FAME biodiesel up to the 7% blend wall.

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for which they wish to "buyout" of their obligation. Fuel suppliers are likely to buyout when the price of RTFCs consistently exceeds the buyout price, or if there is no renewable fuel production, suppliers will be forced to buyout of the obligation (as is currently the case for development fuels). The dRTFCs carry a substantially higher buyout cost than those applicable under the main RTFO scheme. Despite the high buyout cost, there are no material quantities of development fuels in the UK market so nearly all the market is forced to buy out this obligation at a cost of £1.60/litre compared to the £1/litre of normal buyout cost. The practical upshot of this substantial buyout penalty is that a supplier of development fuels like TDO would be able to command nearly all of the extra £0.60/litre buyout cost over existing renewable fuels. As this £0.60/litre (or $3.30/gallon) is well in excess of the U.S. Blender's Credit of $1/gallon, the U.S. Blenders Credit cannot therefore have any material impact on the market for this development fuel.

12. DGD requests that Greenergy and Olleco provide reliable data to support their statement that there is UK production of renewable diesel. If they fail to do so, DGD requests TRID to disregard their arguments as unfounded. Moreover, DGD requests TRID to make any information provided on the existence of UK production of renewable diesel publicly available.

13. If it is confirmed that there is no production of renewable diesel in the UK and considering that renewable diesel and FAME biodiesel are not "like products", DGD reiterates its request to TRID to exclude renewable diesel from the scope of the product subject to the investigation.

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