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 Gunvor and RTFA's submissions dated 22 and 23 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 22 February 2021, DGD filed a response to TRID's questionnaire requesting further information on product scope.

3. On 13 March 2021, DGD submitted additional comments responding to arguments raised by Greenergy and Olleco in their respective submissions of 22 February 2021.

4. On 26 March 2021, TRID made available the submission by the Renewable Transport Fuel Association ("**RTFA**") of 23 February 2021 addressing DGD's arguments relating to product scope. Likewise, Gunvor replied to TRID's additional questionnaire relating to product scope on 22 February 2021.

5. In the present submission, DGD wishes to briefly address RTFA and Gunvor's argument that the benefit received from the U.S. Blender's Credit would allow renewable diesel imports from the U.S. to price out FAME biodiesel produced in the UK.[1]

6. Both RTFA and Gunvor argue that the benefit received under the U.S. Blender's Credit approximately equals the price difference between renewable diesel and FAME biodiesel, which would allow renewable diesel, a product that is inherently more expensive than FAME biodiesel, to compete with FAME biodiesel. As it will be demonstrated below, such reasoning is incorrect.

7. DGD recalls that during the original 2009 investigation conducted by the European Commission, the benefit of the U.S. Blender's Credit was found to be $1 per gallon of FAME biodiesel.[2] The benefit of the U.S. Blender's Credit has not changed since the original EU

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[1] See par. 37 of RTFA's submission of 23 February 2021 opposing DGD's request to exclude renewable diesel from the scope of the investigation; reply to question 1 in Gunvor's reply to the request for further information on product scope of 22 February 2021. Both parties argue that the price difference between HVO Class 1 (the most common type of renewable diesel produced in the EU and RME (the most common type of FAME biodiesel produced in the EU) is approximately $300 / tonne, which is approximately the benefit received under the Blender's Credit scheme in the U.S.

[2] Par. 59 of Commission Regulation (EC) No 194/2009 of 11 March 2009 imposing a provisional countervailing duty on imports of biodiesel originating in the United States of America, 12.3.2009, OJ L 67/50. The European Commission found that *"The biodiesel mixture credit was granted by reference to the quantities of biodiesel used in a blend, i.e. USD 1 per gallon as all the companies concerned used agri-biodiesel. The amount of benefit in the [investigation period] has been calculated on the basis of USD 1 per gallon of neat biodiesel sold in the IP, whether sold as pure biodiesel (B100) or in a blend."*

investigation[3] and DGD does not dispute that $1 per gallon of FAME biodiesel amounts to approximately $300/tonne benefit.

8. However, DGD maintains that the way in which the company sets prices of renewable diesel in any market, whether it is in the EU, UK or the U.S., is unrelated to possible benefits received in the form of subsidies to biofuel producers. DGD's sales prices for renewable diesel are established in accordance with the following price formula that reflects the value of its product in its primary market, California, and hence its opportunity cost for selling the product to a different market:

[*CONFIDENTIAL: Sensitive information relating to the company's sales and price strategy*]

9. DGD's price setting method is not bespoke to DGD. Instead, the elements above reflect the natural valuation variables that affect what a buyer will pay for renewable diesel in the marketplace. Essentially any renewable diesel producer, whether it be DGD or one of its competitors, is selling two things: the physical petroleum diesel substitute and the related compliance credits. So any renewable diesel producer will have a pricing method which will either explicitly or implicitly reflect these components since they reflect what value renewable diesel represents to a buyer.

10. In addition, the value of renewable diesel would depend on supply / demand of the product on the market, as well as the fact that renewable diesel is simply a better quality product than FAME biodiesel (superior cold flow performance, higher cetane values, and an overall better GHG emissions profile)[4].

11. The Renewable Transport Fuel Obligation ("**RTFO**") in the UK currently allows for blending with FAME biodiesel up to 7%. This necessarily creates a demand for FAME biodiesel up to the 7% cap. From an economic standpoint, and thus disregarding specific needs that would make renewable diesel the preferred product, where blenders can chose between a more and less expensive product to satisfy the 7% blending mandate, blenders will chose for the least expensive product, i.e., FAME biodiesel instead of renewable diesel.

12. In 2020 in the UK, the 7% blend wall limitation for FAME biodiesel was met.[5] By consequence, the necessity to complement FAME biodiesel creates a specific demand for renewable diesel. Increasing blending mandates under the RTFO create an increased need for more advanced biofuels, such as renewable diesel. Such increasing demand for renewable diesel in the UK and at prices considerably higher than prices for FAME biodiesel result in that it would not make sense for U.S. exporters of renewable diesel to lower the sales price of renewable diesel to compete with FAME biodiesel.

13. As explained in DGD's submission of 5 January 2021, [*CONFIDENTIAL: This information is available upon payment of a subscription fee only*].

14. In the table below, we provide a comparison between prices for FAME biodiesel and of DGD export sales of renewable diesel [*CONFIDENTIAL: This information comprises sensitive information of the company relating to pricing and information that is provided in an industry report for which the company pays a subscription fee*.]

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3 The European Biodiesel Board ("**EBB**") request for initiation of an expiry review of the EU biodiesel measures of 6 June 2020 that *"the Biodiesel Mixture Credit scheme provides a credit of $1.00 for each gallon of biodiesel used to create a mixture of biodiesel and diesel fuel that is sold as a fuel. This subsidy thus amounts to 300 $ for each tonne of biodiesel mixed with diesel fuel*" (par. 50).

4 Please also refer to DGD's product scope submission of 5 January 2021 for a detailed explanation on why renewable diesel is of superior quality compared to FAME biodiesel.

5 Official statistics by the UK Department for Transportation, as submitted to TRID as Annex 10 to DGD's reply to the questionnaire requesting further information on product scope of 22 February 2021.

15. The comparison demonstrates that there is a price difference of between [*CONFIDENTIAL: This information is based on sensitive information of the company relating to pricing and information that is available only upon payment of a subscription fee*]. It follows that renewable diesel does not compete with FAME biodiesel on a price-level. Contrary to what RTFA and Gunvor argue, there is no incentive for DGD (or any U.S. exporter of renewable diesel) to reduce the price of renewable diesel by approximately $300/tonne, which would be the equivalent of the U.S. Blender's Credit benefit, just so it may compete with FAME biodiesel when there is sufficient and even increasing demand to sell renewable diesel at a price that is approximately $300/tonne more expensive. The U.S. Blender's Credit has no impact on the price of renewable diesel. Rather the price of the product is determined by demand generated from the various GHG savings emission schemes established by governments, and by the rapid proliferation of corporate environmental, social and governance ("**ESG**") policies. As a result, even if DGD did not receive any benefit from the U.S. Blender's Credit, it would still continue to sell its renewable diesel at the same market determined prices as at which it is currently selling.

16. As a final point, it is also worth recalling that the U.S. only produces less than half of the renewable diesel it consumes and that demand is expected to increase. The U.S. currently consumes around *[CONFIDENTIAL: This information is available only upon payment of a subscription fee.]* of renewable diesel and produces approximately *[CONFIDENTIAL: This information is available only upon payment of a subscription fee.]* of renewable diesel. The remainder of the demand *[CONFIDENTIAL: This information is available only upon payment of a subscription fee.]* is currently met through imports, almost all coming from Singapore[6]. As such, any immediate production capacity increases would be destined for the U.S. market rather than export to the UK. There is a shortage of production of renewable diesel in the U.S. and not any spare / overcapacity. It would be incorrect to assume that renewable diesel producers would look for third country markets to offload oversupply at below-market prices.

17. Any potential benefit provided by the U.S. Blender's Credit to U.S. producers would not have any material impact on the price 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.

18. In light of the above, DGD's assertions that there is no production of renewable diesel in the UK and that renewable diesel and FAME biodiesel are not "like products" remain unaltered. DGD reiterates its request to TRID to exclude renewable diesel from the scope of the product subject to the investigation.

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[6] [*CONFIDENTIAL: This industry report is only available to the company upon payment of a subscription fee*].