

**Summary of NBB's Comments on the European Commission's Injury Analysis in its
Provisional Anti-Dumping and Anti-Subsidy Determinations**

March 31, 2009

In its submission to the Commission today, NBB rebuts a number of the Commission's arguments with respect to, among others, the following elements of the proceedings:

- The products subject to anti-dumping duties include blends that contain as little as 20 percent biodiesel. However, the standing of the EU industry and the existence of injury and a causal link to U.S. imports is based on biodiesel in relatively pure forms (i.e., B100 or B99). EU and WTO provisions do not provide legal support for subjecting such a wide scope of products to the duties for which no findings were made. Moreover, the broader EU biodiesel industry, including blenders, ought to have been considered if the definition of the product concerned is B20 and above.
- The joint imposition of provisional anti-dumping and countervailing duties requires high legal standards, including the use of sound methodologies in the establishment of margins and duty rates. Unless the revenue from subsidies is taken into account in determining domestic and export prices, dumping margins may be artificially inflated in breach of EU and WTO law.
- Verbio, one of the sampled EU biodiesel producers, was ultimately excluded from the sample for not having sufficiently cooperated in the investigation. If Verbio did not cooperate, EU and WTO provisions require the EU to make findings based on facts available rather than excluding Verbio from the sample. And, the best facts available are those set forth in Verbio's financial statements issued in March 2009 which clearly evidence very strong results, including nearly 100 percent capacity utilization, a 60 percent increase in sales, a 31 percent increase in earnings, a 14 percent increase in production and market share gains for its biodiesel division. Verbio's actual results emphasize that the sampled EU biodiesel producers were doing very well during the period of investigation.
- The Commission's findings on the volume of imports are based on a hodge-podge of different data sources and on the basis of imprecise customs information. They include a large portion of biodiesel trans-shipped through the United States to take advantage of "splash-and-dash" when it was in effect. Therefore, the EU cannot legally determine that US-origin biodiesel caused injury if it bases its findings on imports that are mixture of biodiesel from different countries.
- The Commission fails to distinguish among possible causes of injury other than U.S.-origin imports. These other causes of injury include the following: imports from third countries; the lack of adequate development of demand; conflicting public policy decisions; and, the massive excess capacity of EU producers. The Commission must also consider the intricate interplay already described by NBB among increased demand for feedstocks, increases in feedstock prices and the impact of prices for crude oil and mineral diesel.
- The Commission's price undercutting/underselling calculations and the injury margin determination are fraught with inaccuracies. The market value difference of SME, CME and PME vis-à-vis RME is understated. A profit of 15 percent is used in the calculations

as the target profit that the EU biodiesel producers should achieve through the effect of the duties. This profit is excessive and nowhere near the profit earned by commodity producers in adjoining sectors of industry.

In light of the above, it is not in the Community Interest to impose anti-dumping and/or countervailing duties on imports of biodiesel from the United States. The imposition of such duties is contrary to EU and international efforts to promote the production and sale of biofuels. It also bucks the irresistible trend toward increased trading and blending of biodiesel due to the global economy's increasing adherence to alternative fuels.

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