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Mr. William Wehrum
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20004

RE: Biodiesel Supply - Docket EPA-HQ-OAR-2017-0091

Dear Mr. Wehrum:

On September 15, 2017, the American Fuel & Petrochemical Manufacturers (“AFPM”)¹ wrote to alert EPA to a potential shortfall of biodiesel needed to comply with the Renewable Fuel Standard (RFS) mandates.² This shortfall stems in part from the effects of recent determinations by the U.S. Department of Commerce in antidumping and countervailing duty (anti-subsidy) investigations the agency is conducting with respect to imports of biodiesel from Argentina and Indonesia. We now write to inform you of the latest developments in these matters and the impact they are having on the quantities of biodiesel imported and available for compliance with the RFS mandates. This information was not available during the 2018 RFS comment period, and in light of EPA’s historical reliance on imported biodiesel to satisfy the RFS mandates, the information is of central relevance to the RFS implementation rule.

On November 9, 2017, the Department of Commerce announced its affirmative final determinations that countervailable subsidies are being provided to producers and exporters of biodiesel from the Republic of Argentina and Republic of Indonesia.³ Commerce determined that the Government of Argentina has been providing unfair subsidies to Argentinian biodiesel producers at rates from 71.45 to 72.28 percent, and that the Government of Indonesia has been providing similar subsidies to Indonesian producers at rates between 34.45 to 64.73 percent.⁴ As a result of these determinations, Commerce has instructed the U.S. Customs and Border

¹ AFPM is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life.

² See AFPM Letter to Sarah Dunham re: Biodiesel Supply in 2017, EPA-HQ-OAR-2017-0091-4116 (Sept. 15, 2017); see also AFPM Comments in response to EPA Notice of Data Availability, EPA-HQ-OAR-2017-0091-4703 (Oct. 19, 2017).

³ Department of Commerce, Biodiesel From the Republic of Indonesia: Final Affirmative Countervailing Duty Determination, 82 *Federal Register* 53471 (Nov. 16, 2017); Biodiesel From the Republic of Argentina: Final Affirmative Countervailing Duty Determination, 82 *Federal Register* 53477 (Nov. 16, 2017).

⁴ *Id.*, see also U.S. Department of Commerce, Press Release, (Nov. 9, 2017), <https://www.commerce.gov/news/press-releases/2017/11/us-department-commerce-issues-affirmative-final-countervailing-duty>.



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Protection (CBP) to collect cash deposits from the U.S. importers of biodiesel from Argentina and Indonesia based on these final rates. Further, in addition to being required to post cash deposits at these final subsidy margins, U.S. importers are also required to post estimated antidumping duties (ranging from 54.36 to 69.91 percent for Argentina and at 50.71 percent for Indonesia) as a result of Commerce's preliminary antidumping duty determinations, which were announced in late October.⁵

Commerce's trade determinations are having a significant impact on shipments of imported biodiesel from these countries. Specifically, biodiesel imports from Argentina and Indonesia have all but dried up following Commerce's preliminary determinations of countervailing duties that were announced in August 2017.⁶ In September 2017, the most recent month for which data is available, no biodiesel was imported from either of these countries.⁷ Moreover, as a result of the significant cash deposits of estimated countervailing and antidumping duties that U.S. importers must now post with CBP when entering biodiesel from Argentina and Indonesia into the United States, there is virtually no prospect of significant volumes of biodiesel imports from those countries for the foreseeable future. Given the historical significance of biodiesel imports from these countries and their role in helping to achieve RFS compliance, EPA must factor these duties into the final RFS mandates for the biomass-based diesel (BBD), advance biofuel, and total renewable fuel standards. Failing to do so would be arbitrary and capricious.

AFPM requests that EPA consider this material information as it moves to finalize the 2018 RFS implementation rule. In addition, the Agency should continue to monitor EMTS entries, shipping data reflecting scheduled imports, and other information relevant to the supply of BBD available for compliance, and be prepared to address any renewable fuel supply shortfalls.

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⁵ See Department of Commerce, Biodiesel From Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, 82 *Federal Register* 50,391 (Oct. 31, 2017); and Department of Commerce, Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, 82 *Federal Register* 50,379 (Oct. 31, 2017).

⁶ See Department of Commerce, Biodiesel From the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination, 82 *Federal Register* 40,746 (Aug. 28, 2017); Department of Commerce, Biodiesel From Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part, 82 *Federal Register* 40,748 (Aug. 28, 2017).

⁷ See Appendix (summary table reporting official monthly U.S. import statistics published by the U.S. Census Bureau and U.S. International Trade Commission).



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Thank you in advance for your attention to this matter. If you have any questions, please do not hesitate to contact the undersigned at (202) 552-8474.

Respectfully submitted,


Richard Moskowitz

cc: Chris Grundler
William Charmley
Paul Machiele
Chad Whiteman