

# VAN BAELE & BELLIS

JEAN-FRANÇOIS BELLIS <sup>\*1</sup>  
PHILIPPE DE BAERE <sup>\*1</sup>  
ANDRZEJ WJ. KMIĘCIK <sup>12</sup>  
PETER L'ECLUSE <sup>\*1</sup>  
RICHARD W.D. LUFF <sup>\*1</sup>  
CATHERINE LONGEVAL <sup>\*1</sup>  
FABRIZIO DI GIANNI <sup>\*3</sup>  
BENOÎT SERVAIS <sup>\*1</sup>  
KRIS VAN HOVE <sup>\*1</sup>  
MARKUS WELLINGER <sup>\*1</sup>  
PORTER ELLIOTT <sup>\*5</sup>  
YURIY RUDYUK <sup>\*7</sup>  
PABLO MUÑIZ <sup>\*8</sup>  
MICHEL BONNE <sup>\*1</sup>  
JOHAN VAN ACKER <sup>\*1</sup>  
ANDREAS REINDL <sup>\*\*9</sup>  
GABRIELE COPPO <sup>11</sup>  
MICHAEL CLANCY <sup>\*9</sup>  
ISABELLE VAN DAMME <sup>\*1</sup>  
JOHAN MOURAUX <sup>\*1</sup>  
CAROLINE DAOUT <sup>\*1</sup>

GENEVA OFFICE  
CLOTILDE DU PARC <sup>1</sup>

LONDON OFFICE  
ALEX STRATAKIS <sup>2 12 13</sup>  
MICHELLE LINDERMAN <sup>2</sup>

GLAVERBEL BUILDING  
CHAUSSÉE DE LA HULPE 166 TERHULPSESTEENWEG  
B-1170 BRUSSELS, BELGIUM

TELEPHONE +32 (0)2 647 73 50  
TELEFAX +32 (0)2 640 64 99  
WWW.VBB.COM

STEPHANIE REINART <sup>\*4</sup>  
RESHAD FORBES <sup>\*\*2</sup>  
TIMOTHY M. KASTEN <sup>\*6</sup>  
CHARLOTTE NASSOGNE <sup>\*11</sup>  
RICHARD BURTON <sup>\*\*2</sup>  
DAVID W. HULL <sup>12 5</sup>  
PEI FANG LO <sup>14</sup>  
KATHARINA BONGS <sup>\*4</sup>  
KOEN T'SYEN <sup>\*1</sup>  
THIBAUT D'HULST <sup>\*1</sup>  
SARA BEUTELS <sup>\*\*1</sup>  
ALDO SCALINI <sup>\*\*11</sup>  
CATHERINE GORDLEY <sup>9</sup>  
HANNELORE MATTHYS <sup>\*1</sup>  
JOANNA REDELBACH <sup>\*1</sup>  
ROSS DENTON <sup>2</sup>

SRL/BV  
1 AVOCAT/ADVOCAAT  
2 SOLICITOR (ENGLAND & WALES)  
3 AVVOCATO CASSAZIONISTA  
4 RECHTSANWÄLTIN  
5 MEMBER OF THE GEORGIA BAR  
6 MEMBER OF THE WISCONSIN BAR  
7 MEMBER OF THE UKRAINIAN BAR  
8 ABOGADO  
9 MEMBER OF THE NEW YORK BAR  
10 AVOCAT AU BARREAU DE PARIS  
11 AVVOCATO  
12 MEMBER OF THE ATHENS BAR  
13 MEMBER OF THE IRISH BAR  
\* SRL/BV \*\*S.C.S./COM.VV.

James Reith, Lead Investigator  
UK Government Department for Business and Trade  
Trade Remedies Authority  
United Kingdom  
[TD0035@traderemedies.gov.uk](mailto:TD0035@traderemedies.gov.uk)

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By TRS

**NON-CONFIDENTIAL**

Dear Mr Reith, dear Case Team

**Re: Transition Review TD0035 — *Certain tyres (China): Comments of Hankook on the TRA's provisional choice of Brazil as most "appropriate representative third country" in the event of a finding of a particular market situation (PMS)***

**Our Client: Hankook Group (Chongqing Hankook Tire Co. Ltd., Jiangsu Hankook Tire Co. Ltd., Hankook Tyre UK Ltd. and Shanghai Hankook Tire Co., Ltd.)**

This letter is filed on behalf of Chongqing Hankook Tire Co. Ltd., Jiangsu Hankook Tire Co. Ltd., Hankook Tyre UK Ltd, and Shanghai Hankook Tire Co., Ltd (collectively referred to as **Hankook**) in the framework of the above-mentioned transition review initiated by the Trade Remedies Authority (**TRA**) (the **Investigation**).

Hankook refers to the Note to Public File issued by the TRA on 21 September 2023 (the **Note**), in which the TRA announced that it had provisionally chosen Brazil as the *most* appropriate representative third country should it be determined that a Particular Market Situation (**PMS**) exists in the People's Republic of China (**PRC**) in the context of the Investigation. Hankook is grateful for the opportunity to provide comments on the TRA's provisional choice of appropriate representative third country, which are set out below.

In particular, Hankook wishes to express its great surprise as to this preliminary decision, since it appears that the TRA has not given due consideration to its comments submitted on 18 August 2023 (the **Initial Submission**) where Hankook indicated that Brazil would not be a suitable choice as an appropriate representative third country in this case.

**1. BRAZIL DOES IN FACT APPLY TRADE REMEDY MEASURES AFFECTING THE MARKET RELEVANT TO THE LIKE GOODS**

At the outset, Hankook considers that the TRA's provisional choice of Brazil as the most appropriate representative third country, as outlined in the Note, appears in large part to be based on an incomplete picture of the prevailing conditions in Brazil's market. Therefore, Hankook respectfully submits that any eventual decision by the TRA to select Brazil as the appropriate representative third country in the context of the Investigation would be inherently flawed.

The TRA has explained in the Note that a key factor by which Brazil was provisionally identified as the most appropriate representative third country was "*whether any existing trade remedy measures are in place relating to the like goods*". Indeed, this factor appears to have been determinative in the eyes of the TRA, justifying the selection of Brazil over the other countries considered by the TRA — with Brazil being "*deemed most suitable on the basis of lack of known market distortions relevant to bus and lorry tyres*".

However, Hankook submits that this conclusion is at odds with the current market conditions in Brazil. To this end, Hankook wishes to draw the attention of the TRA to GECEX Resolution No. 198 of 3 May 2021<sup>1</sup> (**Resolution No. 198**), by which Brazil extended for a further period of up to five years the definitive anti-dumping duty applied to imports of "*radial construction tires, with 20", 22" and 22.5" rims, for use in buses and trucks, commonly classified in sub-item 4011.20.90 of the Common Nomenclature of MERCOSUR – NCM, originating in China*".<sup>2</sup> This measure was first adopted in 2009,<sup>3</sup> extended initially for a further period in 2015,<sup>4</sup> and was again most recently extended in 2021 for a further period by Resolution No. 198, following a review.

To the best of Hankook's knowledge, this measure remains in force currently in Brazil. The measure directly encompasses the like goods which, in Hankook's view, is a significant factor affecting Brazil's suitability as an appropriate representative third country — and one to which the TRA does not appear to have given due consideration in the process of selecting its provisional choice of appropriate representative third country.

**2. THE NATURE OF BRAZIL'S INDUSTRY RENDERS IT AN UNSUITABLE CANDIDATE AS A REPRESENTATIVE THIRD COUNTRY**

Hankook recalls the important role of the concept of "*appropriate representative third country*" in facilitating adjustments under regulation 13 of the Trade Remedies (Dumping and Subsidisation) (EU Exit)

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<sup>1</sup> Source: [Official text of Resolution No. 198](#), as published in the Official Gazette of Brazil.

<sup>2</sup> Source: Unofficial translation of [Resolution No. 198](#).

<sup>3</sup> Source: Section 1.1 of the Annex to [Resolution No. 198](#).

<sup>4</sup> Source: Section 1.2 of the Annex to [Resolution No. 198](#).

Regulations 2019 (as amended)<sup>5</sup> (the **Dumping and Subsidisation Regulations**), the purpose of which is, according to regulation 13(2):

“(2) ... to calculate what the overseas exporter's costs and profits would be in the market of the exporting country or territory **if costs, prices and profits in that market were substantially determined by market forces** [emphasis added].”

It is reasonable to consider that the country which would offer the most accurate picture of what costs, prices and profits would be if these were substantially determined by market forces would be the country with the market that is closest in comparison to that of the exporting producer and with an industry that is closest to this in scale and complexion.

However, Brazil is not comparable to China in respect of any of the factors above as relied on by the TRA in its practice and would, consequently, not offer a suitable appropriate representative third country to allow adjustments to be made in a manner consistent with the purpose identified by regulation 13(2) of the Dumping and Subsidisation Regulations.

While Hankook acknowledges that the TRA has on a previous occasion considered Brazil to have a level of economic development similar to China when selecting this as an appropriate representative third country,<sup>6</sup> it is crucial to recall that the identification of Brazil as an appropriate representative third country in that case was ultimately based on the consideration of other factors by the TRA, notably level of employment in industry (as a % of total employment) and the presence of an industry involved in the production of the like goods in question. Indeed, the presence of industry involved in the production of the like goods has consistently been an important factor considered by the TRA in its recent practice on the identification of an appropriate representative third country for China more generally.<sup>7</sup>

In the context of the Investigation, however, the application of the criteria used by the TRA in the Note and a thorough appraisal of the Brazilian industry actually lead to the conclusion that Brazil does not offer a suitable comparison with China:

- **Production capacity** — the relevant industry in Brazil is, in relative terms, very small (with a production capacity of 7,130,000 units compared to China's 170,022,387 units in 2022).<sup>8</sup>
- **Limited number of producers of the like good** — Brazil's industry involved in the production of the like good is composed of a relatively very limited number of producers (eight, by comparison with 68 for China).<sup>9</sup> The result is a correspondingly less competitive market.
- **Brazil has a relatively much lower proportion of people employed in industry** — while the TRA has previously<sup>10</sup> considered Brazil (21%)<sup>11</sup> to have a similar proportion of people employed in industry to China (28%),<sup>12</sup> there are several other countries among those considered which have

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<sup>5</sup> [The Trade Remedies \(Dumping and Subsidisation\) \(EU Exit\) Regulations 2019 \(as amended\)](#).

<sup>6</sup> [AD0012 \(Aluminium Extrusions from China\)](#).

<sup>7</sup> [AD0021 \(Single-mode Optical Fibre Cables from China\)](#).

<sup>8</sup> Source: Based on Hankook's own internal analysis of data acquired from "Tire Business 2022".

<sup>9</sup> Source: "Tire Business 2022".

<sup>10</sup> [AD0012 \(Aluminium Extrusions from China\)](#).

<sup>11</sup> Source: [World Bank Open Data](#) (as of 28 September 2023).

<sup>12</sup> Source: [World Bank Open Data](#) (as of 28 September 2023).

a proportion of people employed in industry which is higher than Brazil's and closer to China's, and which therefore offer a more suitable comparison with China for the purposes of benchmarking.

- **Negligible UK imports of the like goods from Brazil** — Brazil does not export any meaningful quantities of the like goods to the UK.<sup>13</sup> Benchmarks should, where possible, be based on conditions in an exporting country which is actually and meaningfully involved in the export of like goods to the UK.

The presence and nature of the relevant industry has been a consistent feature in the recent practice of the TRA when selecting an appropriate representative third country in respect of China. However, in the context of the Investigation, applying this criterion to Brazil reveals clearly that Brazil does not offer a suitable comparison with China for the purposes of making adjustments under regulation 13 of the Dumping and Subsidisation Regulations. Above all, Brazil has a comparatively very small number of producers, a production capacity which is a small fraction of China's (and Thailand's for that matter) and, crucially, exports only a negligible quantity of the like goods to the UK. The market of the country selected as an appropriate representative third country must be capable of providing an accurate reflection of what costs, prices and profits might be in the market of the exporting country if these were substantially determined by market forces. As such, proposing that adjustments by reference to market conditions in Brazil — which are characterised by an industry involved in the production of the like goods which in no way bears meaningful comparison to that of China, and is furthermore subject to trade remedies measures covering the like goods — offers little realistic prospect of yielding an accurate reflection of those costs, prices and profits in the context of the Investigation. While in the Note the TRA asserts a “*lack of known market distortions relevant to bus and lorry tyres*” in concluding as to Brazil's suitability, it should by the same token be recalled that the lack of a sufficiently comparable industry involved in the production of the like goods itself risks undermining the results of any adjustments exercise.

The above makes it clear that Brazil is not a suitable choice as a provisional appropriate representative third country in the present case.

### **3. THAILAND WOULD BE A MORE SUITABLE APPROPRIATE REPRESENTATIVE THIRD COUNTRY**

Given that Brazil is clearly inadequate for the purposes of determining the normal value in this case, Hankook wishes to respectfully draw the TRA's attention to the Initial Submission, in which a number of countries which would offer a more suitable comparison with China from this perspective — notably Thailand and Türkiye – were identified. In each respect, Brazil offers a less effective comparison with China.

Particularly, as explained in the Initial Submission and reiterated here below in Section 3, Hankook respectfully submits that Thailand would be more suitable than Brazil.

As detailed in the Initial Submission, Thailand meets the relevant criteria as a suitable representative third country in the context of the Investigation. Indeed, in contrast to Brazil, it not only has a level of economic

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<sup>13</sup> UK official statistics acquired from uktradeinfo.com indicate that Brazil exports to the UK were 37,502 kg in 2022. Note that the reported figure refers only to goods falling under CN code 40 11 20 90 00 (new tyres), as official UK data relating to CN 40 12 12 00 10 was unavailable at this source.

development similar to China but – most importantly – also has a market and industry involved in the production of the like goods which might be considered most comparable to that of China:

- **Thailand has a similar level of economic development to China** — Thailand could quite reasonably be considered as having a similar level of economic development to China, being classified, alongside China, as an upper-middle income country by the World Bank.<sup>14</sup> Moreover, Thailand is comparable to China in each of the key indicators of GDP per capita, life expectancy at birth and literacy rate.<sup>15</sup>
- **Thailand’s industry offers the closest comparison with China’s** — Thailand’s industry involved in the production of the like goods is closest in scale to that of China in terms of production capacity (15,459,930 units in 2022,<sup>16</sup> more than double that of Brazil). Furthermore, Thailand has double the number of producers of Brazil (16 compared to 8 in Brazil).<sup>17</sup> Thailand also has a higher proportion of people employed in industry (23%) than Brazil (21%).<sup>18</sup> Finally, Thailand exports a quantity of the like goods to the UK that is on a similar scale to China, which cannot at all be asserted in respect of Brazil.

#### **4. CONCLUSION**

Hankook respectfully submits that Brazil cannot reasonably be considered as the “*most*” appropriate representative third country in the context of the Investigation, as the TRA has asserted in the Note.

By contrast, not only can Thailand be considered to have a similar level of economic development to China, but it also equally has a substantial industry involved in the production of the like goods which is closer to China’s in several key respects, such as number of producers, production capacity and exports of the like goods to the UK. To this end, Hankook considers that Thailand is the most appropriate representative third country for the purposes of the Investigation.

Yours sincerely,

Gabriele Coppo

Aldo Scalini

Giovanni Pregno

Eamonn Arbuckle

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<sup>14</sup> Source: [World Bank income classifications for FY 2024](#).

<sup>15</sup> Source: [World Bank Open Data](#) (as of 28 September 2023).

<sup>16</sup> Source: Based on Hankook’s own internal analysis of data acquired from “Tire Business 2022”.

<sup>17</sup> Source: “Tire Business 2022”.

<sup>18</sup> Source: [World Bank Open Data](#) (as of 28 September 2023).