
**COMMENTS IN THE UK TRANSITION REVIEW OF ANTI-DUMPING AND
COUNTERVAILING MEASURES ON CERTAIN PNEUMATIC TYRES USED
FOR BUS OR LORRIES ORIGINATING IN THE PEOPLE'S REPUBLIC OF
CHINA**

TD0035 AND TS0036

ON BEHALF OF
CHINA RUBBER INDUSTRY ASSOCIATION
(CRIA)

11 September 2023

1. INTRODUCTION

- [1] On 3 May 2023, the UK Trade Remedies Authority (TRA) published notices of initiation of transition reviews of the anti-dumping¹ and countervailing² measures on certain pneumatic tyres used for bus and lorries³ (hereinafter “bus and lorry tyres” or “truck and bus radial tyres” or “TBR”) originating in the People’s Republic of China.
- [2] The UK transition review of the anti-dumping measures (TD0035) is related to the one initially adopted in the European Union (EU) back in 2018.⁴ The UK transition review of the countervailing measures (TS0036) is related to the parallel anti-subsidy measures adopted in the EU.⁵
- [3] Subsequent to the UK’s withdrawal from the EU, the UK Secretary of State periodically publishes determination notices⁶, authorizing the UK Trade Remedies Authority (TRA) to conduct transition reviews to determine if the EU trade remedy measures should be maintained, varied or revoked in the UK. A UK transition review considers whether the application of the EU anti-dumping and anti-subsidy duties is necessary or sufficient to offset dumping and/or subsidisation of the relevant goods in the UK market, and whether injury to the UK industry in the relevant goods would occur if the anti-dumping and/or anti-subsidy duties were no longer applied to those goods.

¹ The full Notice of Initiation of a transition review of the anti-dumping measures (TD0035) is accessible via link: <https://www.trade-remedies.service.gov.uk/public/case/TD0035/submission/9c297680-f2e3-4eb6-acc9-3f0d24040e0f/>.

² The full Notice of Initiation of a transition review of the countervailing measures (TS0036) is accessible via link: <https://www.trade-remedies.service.gov.uk/public/case/TS0036/submission/ddd10d89-381f-481a-8cf9-8f1bd5cb3393/>.

³ The description of goods subject to review is “certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, having the following commodity codes: 40 11 20 90 00 and 40 12 12 00 10.

⁴ Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 263, 22.10.2018, p. 3–52).

⁵ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1–124).

⁶ It is noted that the determination notices for transitioning the EU measure imposed on these specific goods has been published. See Notice of determination 2020/22: anti-dumping duty on certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China, published on 31 December 2020, at <https://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-bus-and-lorry-tyres-from-china/notice-of-determination-202022-anti-dumping-duty-on-certain-pneumatic-tyres-new-or-retreaded-of-rubber-of-a-kind-used-for-buses-or-lorries-and-wi>; and Notice of Determination 2020/23: countervailing duty on certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China, published on 31 December 2020, at <https://www.gov.uk/government/publications/trade-remedies-notices-countervailing-duty-on-bus-and-lorry-tyres-from-china/notice-of-determination-202023-countervailing-duty-on-certain-pneumatic-tyres-new-or-retreaded-of-rubber-of-a-kind-used-for-buses-or-lorries-and>.

- [4] This submission is made on behalf of the China Rubber Industry Association (“CRIA”) and its members. CRIA is a Chinese national-level industry association, and is the only national-level association that represents the interests of the entire rubber industry in China. CRIA has over 2,000 member enterprises, including rubber manufacturers, raw material suppliers, machinery manufacturers, and trading companies. CRIA organizes its members – manufacturers of bus and lorry tyres – in responding to anti-dumping, countervailing and safeguard investigations initiated in foreign countries.
- [5] In CRIA’s view, the foundations of the present transition review are severely questionable due to various factors. Firstly, there is no legal basis for conducting UK transition reviews under the Anti-Dumping Agreement (“ADA”) and Agreement on Subsidies and Countervailing Measures (“SCM”) concluded within the World Trade Organization (“WTO”). Secondly, the current measures on Chinese bus and lorry tyres, which transitioned from the EU jurisdiction, were themselves found inconsistent with the EU trade defence legislation and annulled by the General Court⁷ of the in their entirety. Thirdly, the UK tyres industry is different from the initially established EU industry, therefore, the product scope of the transition review is defined wrongly. Finally, CRIA sees no evidence on possible recurrence of dumping or possible continuation of subsidised goods subject to review would cause injury to the UK producers.
- [6] In particular, CRIA will show the lack of a legal basis in relation to the imposition of the measures in the UK, as well as the transition review itself. As will be demonstrated by CRIA, the only way in which the UK could lawfully adopt anti-dumping and countervailing measures as currently in force is by conducting in full independent investigations meeting the standards set by the WTO ADA and SCM.
- [7] Even if the legal requirements for the measures and the transition review were to be met, *quod non*, there would still not be a valid ground for a continuation of the EU measures imposed in 2018. Specifically, the scope of the goods subject to review, taken over directly from the underlying EU investigations, is significantly broader than the limited scope of actual production in the UK. At the very least, the product scope must be duly revised should the TRA come to the conclusion that such continuation is recommended. Second, the initial anti-dumping and anti-subsidy measures in the EU, as transposed in the UK jurisdiction, has been annulled by the EU Court of Justice due to failure to carry out a fair price comparison in the calculation of the price undercutting and lack of reasoning in relation to the weighting of data from the sample of Union producers.
- [8] Moreover, CRIA will demonstrate that due to the current economic situation in the UK, the continuation of measures can only lead to a furthering of inflation and a worsening of the economic situation. Therefore, continuing measures would even be against the UK’s economic interest.

⁷ Judgement of the General Court (Tenth Chamber, Extended Composition) of 4 May 2022, China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v European Commission, T-30/19 and T-72/19. EU:T:2022:226, in particular, recital 207.

- [9] Each of these elements will be discussed separately in the following sections. CRIA hereby reserves the right to present further evidence and arguments throughout any of the later stages of this proceeding. This includes meetings, which CRIA may request in the due course of the proceeding. CRIA also reserves its right to submit comments on the TRA's Statement of Essential Facts (SEF) in TD0035 and TS0036 once they become available.

2. LAWFULNESS AND VALIDITY OF MEASURES AND TRANSITION REVIEW

2.1. The continuation of EU measures in the UK following Brexit is unlawful under the WTO ADA and SCM

- [10] As set forth in the WTO ADA, an anti-dumping measure shall be applied only under the circumstances provided for the ADA. As such, Article 3.1 of the ADA clearly stipulates that:

“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.”⁸

- [11] Similarly, Article 15.1 of the WTO SCM deals with the determination of injury caused by subsidised imports and reads as follows:

“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products(46) and (b) the consequent impact of these imports on the domestic producers of such products.”

- [12] In the case at hand, it is entirely clear that the UK has not applied measures on the basis of a domestic investigation. Instead, the currently applicable measures in the UK are applied on the basis of (old) investigations conducted by the European Commission, which was based on the EU basic Anti-dumping and Anti-Subsidy Regulations.

- [13] CRIA also points out that the existing anti-dumping and anti-subsidy measures were not only imposed by the European Commission as investigating authority (as opposed to the TRA), they were also based on the EU concept such as the “Union industry” composed of 28 Member States, which at the time included the UK. This obviously means that the underlying determinations of dumping, subsidisation, injury, causality and public interest were all made by assessing the impact of imports on the entire market of 28 EU Member States, as opposed to only the UK market.

⁸ Article 3.1 of the WTO ADA. See also Article 5 of the WTO ADA specifying the conditions which must be met by such investigation. CRIA maintains that, since the UK authorities have never conducted a separate and independent investigation, these conditions have not been met. In other words, the current transition review is based on an underlying EU market investigation, not one that was limited to the UK market specifically. Same conclusion applies to Article 15.1 of the WTO SCM.

- [14] Following Brexit, the UK has decided to continue the application of certain EU trade remedy measures in its domestic legal order by way of national laws.⁹ CRIA however questions the legality of this rollover mechanism under international law. As the UK has withdrawn from the EU legal order, there cannot be a situation of legal continuation. In other words, the UK cannot be regarded as a legal successor to the EU under international agreements, thereby acquiring its rights and obligations or legal status under any international agreement.
- [15] The point above can be best illustrated by pointing to the agreement that the UK itself had to enter into its trade arrangements with the EU. As per the EU-UK Trade and Cooperation Agreement of 30 April 2021, the UK had to enter into a new international agreement with the EU to govern trade aspects of its relationship with the EU following Brexit. Given that the UK itself had to enter into a new agreement in relation to its trade policy *vis-à-vis* the EU, it is incomprehensible how its trade policy *vis-à-vis* third countries could continue to be governed on the basis of EU policy, which were simply taken over by the UK following Brexit.
- [16] In CRIA's view, the UK was simply not entitled to continue applying EU measures in its domestic legal order following the Brexit. This is acknowledged in the EU's own publication of 18 January 2021, where it stated that:

*“All anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union.”*¹⁰

- [17] The fact that an alternative route, which seems more appropriate under UK and international law, in fact possible, is evidenced by another investigation conducted by the TRA. On 21 June 2021, the first UK anti-dumping investigation was initiated concerning imports of aluminium extrusions from China.¹¹ The final determination was published by the TRA on 16 December 2022.¹² As opposed to other proceedings, this is not a follow-on investigation of measures adopted at EU level, despite the fact that the EU launched its investigation and adopted provisional measures prior to Brexit.¹³ Subsequent to the aluminium extrusion investigation, UK also initiated its own parallel

⁹ See the European Union (Withdrawal) Act 2018, European Union (Withdrawal) Act 2019, as well as the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the “Regulations”).

¹⁰ Notice of 18 January 2021 regarding the application of anti-dumping and anti-subsidy measures in force in the Union following the withdrawal of the United Kingdom and the possibility of a review (OJ C18, 18.1.2021, 41).

¹¹ See the notice of “TRA opens first case in response to application from UK industry, the TRA will investigate whether aluminium extrusions are being dumped in the UK by businesses in the People's Republic of China, at <https://www.gov.uk/government/news/tra-opens-first-case-in-response-to-application-from-uk-industry>.

¹² See *Final Determination Investigation into alleged dumping of aluminium extrusions from the People's Republic of China* (Investigation No. AD0012), at <https://www.trade-remedies.service.gov.uk/public/case/AD0012/>. Also see: Notice of Department of Business & Trade, Taxation notice 2022/11: definitive anti-dumping duties on certain aluminium extrusions originating from China. Published 16 August 2022. <https://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-certain-aluminium-extrusions-from-china>

¹³ More specifically on 12 October 2020, see Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ L. 336, 13.10.2020, p. 8).

anti-dumping and anti-subsidy investigations on single-mode optical fibre cables from China.¹⁴ Thus, in terms of both aluminium extrusions and single-mode optical fibre cables, although there are measures in the EU, the TRA chose to initiate UK's own investigation rather than rolling over the EU measures.

- [18] Given that the same investigating authority, the TRA has already proven that another route, which appears to be more consistent and valid under the principles of international and UK domestic law, the TRA is requested to consider applying the same as regards the current transition review investigation on bus and lorry tyres, which should be conducted under the applicable UK legal regime, and a new investigation (instead of a transition review) should be launched with the parameters set out therein.
- [19] It logically follows that the currently applicable UK anti-dumping and countervailing measures on bus and lorry tyres are unlawful, as they are based on the findings of a separate investigating authority (the European Commission) which the UK itself does not belong to anymore. This is strengthened by the additional fact that these findings were drawn on the basis of an investigations covering the EU industry and market, rather than the UK ones. By merely taking over these measures, the UK is currently applying trade defence instruments, the permissibility of which were assessed by investigating imports' impact on the EU, not the UK domestic industry and market. Moreover, both measures were subsequently annulled by the EU General Court and reimposed by the Commission on different grounds.¹⁵ As such, the continuation of these measures by the UK is not in line with the requirements set out by the WTO ADA.

2.2. The UK transitional review is invalid under the WTO ADA and SCM

- [20] In CRIA's view, not only are the currently applied measures in the UK invalid because they have been taken over from existing EU measures rather than based on an independent assessment taking into account the UK domestic industry and market, but also, the unlawfulness extends to the initiated transition review in itself.
- [21] As set out in Article 11.2 of the WTO ADA:

“The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review [...]”

¹⁴ AD 0021 and AS0022. See Press release: *New investigations into imports of fibre optic cables from China. The TRA has opened an anti-dumping investigation and a countervailing investigation into imports of fibre optic cables from China.* Published on 26 April 2022. <https://www.gov.uk/government/news/new-investigations-into-imports-of-fibre-optic-cables-from-china>. The TRA has already published the SEF documents in both anti-dumping and countervailing investigations, and provisional duties are currently in place. See <https://www.gov.uk/government/publications/trade-remedies-notice-anti-dumping-duties-on-optical-fibre-cables-from-china>

¹⁵ See detailed analysis on this issue under Section 2.4.

- [22] Article 21.2 of the WTO SCM stipulates the similar article in relation to countervailing measures:

The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review.

- [23] The UK transition review cannot be considered as a permissible review, either under Article 11.2 of the WTO ADA, or under Article 21.2 of the WTO SCM. This is because the reviewing authority (UK TRA) is different from the investigation authority which has assessed the need for the imposition of the original measures (the European Commission). Moreover, the UK transition reviews are not covered by Article 11.3 of the WTO ADA and Article 21.3 of the WTO SCM, which are concerning the concept of “expiry (sunset) reviews”. As a matter of fact, UK transition reviews cannot be supported by any provision in the WTO ADA and/or SCM. Therefore, CRIA maintains that such reviews are invalid under the WTO ADA and SCM and should be terminated immediately as a result, and if need be replaced by a domestic autonomous investigation that covers the UK market as a whole.

2.3. Conclusion on the validity of UK measures and transition review

- [24] In view of the above, i.e. the conclusion that both the continued imposition of EU measures in the UK following Brexit, and the attempt to legalize this situation by conducting a UK transition review of these measures are unlawful under the WTO ADA and SCM, CRIA is of the view that the UK can only remedy the situation by immediate revocation of the measures.
- [25] To be clear, as a WTO member, the UK is of course entitled to launch an investigation into the impact of any imports onto its domestic industry and market. It has the right, as every other WTO member, to protect the domestic market under the conditions set out in the WTO ADA and SCM. However, this does not entitle the UK to impose measures on the basis of an investigation which was not conducted *vis-à-vis* the UK domestic industry or market, or on the basis of a review of such measures applied to the UK domestic industry or market.
- [26] In view of the above, CRIA respectfully requests the TRA to regularize this unlawful situation by terminating the currently applicable measures, as well as the transition reviews.

2.4. No basis for transition review as the EU General Court has revoked the EU anti-dumping and anti-subsidy measures imposed on truck and bus tyres from China.

- [27] The UK's transition of EU trade defence measures refers to the process through which the UK has retained certain EU trade defence measures following Brexit. The Trade Remedies Authority (TRA) operated on the assumption that all retained measures were valid in the EU and could be incorporated into UK law via the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.
- [28] The TRA seems to initiate transition reviews before the expiry of the corresponding EU measure. In addition to CRIA's remarks above, this approach fails to account for the potential annulment of the initial measures due to inconsistencies with EU trade remedies legislation and related WTO agreements. Consequently, the TRA risks upholding and conducting a review of a trade defence measure that might not have been justified under applicable regulations.
- [29] This situation applies directly to the ongoing transition review of anti-dumping and countervailing measures on bus and lorry tires originating from China. CRIA draws the TRA's attention to the judgment of the EU General Court in *CRIA and CCCMC v European Commission* (T-30/19 and T-72/19)¹⁶.
- [30] In the referenced ruling, the EU General Court found that the European Commission failed to conduct a fair price comparison when calculating the price undercutting at the same level of trade. This essentially resulted in discriminatory treatment between the sales of European Union and Chinese exporting producers. Specifically, the European Commission considered sales prices to the first independent buyers for European Union producers, while it did not apply the same approach to Chinese exporting producers.
- [31] Furthermore, the General Court identified a clear inconsistency in European Commission regulations, as different economic analysis methods were used in the contested regulations. This inconsistency meant that an objective examination of the impact of dumped or subsidized imports was not conducted in accordance with Article 3(2) of the EU Anti-dumping Regulation and Article 8(1) of the EU Anti-subsidy Regulation.
- [32] Lastly, the General Court found a breach of the parties' rights of defence due to a failure to disclose relevant data.
- [33] Given the gravity of the abovementioned breaches and their direct impact on the injury determination to the EU industry (and UK industry at that time), the General Court annulled the definitive anti-dumping and countervailing duties at issue in their entirety.¹⁷
- [34] CRIA is aware that subsequent to the General Court's judgement, the European Commission reopened the anti-dumping and anti-subsidy investigation following the annulment of the initial definitive measures. These reinvestigations led to the re-

¹⁶ Judgement of the General Court (Tenth Chamber, Extended Composition) of 4 May 2022, *China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) v European Commission*, T-30/19 and T-72/19. EU:T:2022:226.

¹⁷ See para 207 and point 2 of the resolute part, *ibid*.

imposition of the measures, albeit at lower levels applicable to a list of Chinese exporters.¹⁸

- [35] CRIA submits that EU General Court’s rationale and findings regarding the illegitimacy of the initial definitive anti-dumping and countervailing duties, particularly in terms of procedural issues and injury determination, must be carefully considered by the TRA in the ongoing transition review investigation. The abovementioned judgment clearly demonstrates that upon objective analysis of all pertinent evidence in the case files, the TRA lacks grounds to transition the EU measures, as of 2018, into the UK legal framework. At the very least, even if the TRA later on intends to maintain a certain level of anti-dumping and countervailing duty on bus and lorry tyres imposed on Chinese imports, it must duly take into account the lower level of duty determined by the European Commission in the Re-imposition Regulations.

3. THERE EXISTS SIGNIFICANT DIFFERENCES BETWEEN NEW AND RETREADED TYRES

- [36] The present transition review inherited the product scope of the initial EU proceeding, which covering pneumatic new and retreaded TBR tyres classified under commodity codes 40 11 20 90 00 (new tyres) and 40 12 12 00 10 (retreaded tyres).

- [37] CRIA would like to submit the significant difference between new and retreaded tyres under the meaning of the WTO ADA. CRIA believes that the differences are significant enough to warrant a finding of “two different products” instead of “A product” as set out in Article 2.1 of the WTO ADA that:

“For the purpose of this Agreement, a product is to be considered as being dumped [...]”

- [38] CRIA describes below some of the critical differences and elements to show the significant differences between new and retreaded tyres, and they cannot be considered as a single product concerned within one investigation. This issue is more important as the UK industry does not manufacture new tyres while the Chinese imports are only new tyres.

- [39] New and retreaded tyres have different essential physical, technical and chemical characteristics. Specifically, they have significant characteristics differences in **3.1-**

¹⁸ See Commission Implementing Regulation (EU) 2023/737 of 4 April 2023 re-imposing a definitive anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People’s Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19, OJ L 96 /9-44, 5 April 2023,(the **Regulation of Reimposition of Anti-dumping duty**) and Commission Implementing Regulation (EU) 2023/738 of 4 April 2023 re-imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People’s Republic of China following the judgment of the General Court in joined cases T-30/19 and T-72/19, OJ L 96/45-79, 5 April 2023. (the **Regulation of Reimposition of countervailing duty**)

Manufacturing Process and Cost, 3.2-Durability and Lifespan, and 3.3-Appearance. They are also significantly different in circulation and use, in perspective of **3.4-Main Use and Application, 3.5- Sales Channels, 3.6- Consumer Perception,** and **3.7-Commodity Codes.** Moreover, **3.8-Other investigations** in other cases also indicated that new and retreaded tyres were not single products.

3.1. Manufacturing Process and Cost

[40] New tyres and retreaded tyres are manufactured differently. One main difference between them is that whether the tyre treads are entirely changed at the end of the production process. For the manufacturing of new tyres, its treads are manufactured from scratch with new materials, while for the manufacturing of retreaded tyres, the old treads are removed and a new tread to the tyre's casing. This would also lead to a higher manufacturing cost for new tyres than retreaded ones for the complete use of new materials, including the tyre's casing, and finally lead to a higher cost or price for consumers.

3.2. Durability and Lifespan

[41] From a technical standpoint, the durability and lifespan of retreaded tyres are less than those of new ones. The durability and lifespan of new tyres are designed to last longer with new components. On the other hand, the durability and lifespan of retreaded tyres would be restricted by their essential but ageing components from the used tyres. This comparison of lifespan was confirmed by the panel in *Brazil-Retreaded Tyres*, which held the view that all types of retreaded tyres have a shorter lifespan than new ones by definition.¹⁹

3.3. Appearance

[42] The appearance of new and retreaded tyres is distinguishable. One representative difference is that the retreaded tyres generally have shallower tread depths than new tyres. Differences in the manufacturing process between complete fresh tread rubber of new tyres and the application of a layer of tread to the existing tyre casing cause the tread depth difference.

3.4. Main Use and Application

[43] The main uses and applications of new and retreaded tyres are different. New tyres are more used for the original equipment, whereas retreaded tyres are not. Besides, new tyres are more likely to be applied to places that need high quality and stability, including the steering axle, the front of tractor units, and trucks carrying dangerous

¹⁹ Panel Report, *Brazil-Retreaded Tyres*, para 7.130

goods. The majority of retreaded tyres are applied to truck trailers and the drive axle of the truck.

3.5. Sales Channels and Markets

[44] Due to the different uses and applications, new and retreaded tyres have different sales channels and consumers. The customers of new tyres, with the main market on original equipment, are mainly specialised dealers and new bus or truck manufacturers. The main customers of retreaded tyres are mainly transportation firms or automobile service companies, and specialised dealers are merely regarded as intermediaries.²⁰ The economic activity of transportation business, which is constantly transporting goods or passengers from A to B, the replacement market for retreaded tyres is naturally larger than the original equipment market for new tyres. Finally, and most importantly, the retreaded tyres market constitutes a secondary “after-service” market in relation to the market for new tyres, while new tyres could not constitute a substitute for retreaded tyres. The retreading is performed for prolonging the life of a tyre and postponing the purchase of a new tyre, the new tyres could not be competition and risk the market of the retreaded tyres.

3.6. Consumer Perception

[45] The consumer perception between new and retreaded tyres differs considerably, mainly on the quality and the safety considerations. Retreading could result in the structural quality inherited from the initial tyre being inferior to the quality of a new tyre, and the retreaded one will never be able to achieve the performance a new tyre can achieve. Even retreaded tyres from reliable manufacturers are often perceived as inferior to new tyres by consumers and end-users. Besides, consumers also consider new tyres to be safer than retreaded tyres. Built with new materials such as tread or casing, new tyres provide stronger traction and grip than retreaded tyres. This view is also committed by the Commission of the European Communities.²¹

3.7. Commodity Codes

[46] Their different commodity codes could also prove the difference between new and retreaded tyres. Generally, different products have different commodity codes. In this case, the codes of all new tyres and all retreaded tyres could be divided into two separate commodity codes:

- 40 11 20 90 00 for new pneumatic tyres used on buses and lorries with a load index exceeding 121
- 40 12 12 00 10 for retreaded tyres used on buses and lorries with a load index exceeding 121

²⁰ See European Commission Case COMP/E-2/36.041/PO — Michelin, paras. 114.

²¹ See EU Court Case C-322/81 *Michelin v Commission*, p. 3469.

[47] This difference further indicates that new and retreaded tyres cannot be regarded as a single product in the investigation.

3.8. Other Investigations

[48] Several other investigating authorities below have initiated and conducted investigations and considered new and retreaded tyres separately. Such as: The United States to truck and bus tyres from China²², India to bus and truck radial tyres originating of exported from China or Thailand²³, the Eurasian Economic Commission to truck tyres from China,²⁴ or Egypt on tyres imports from China²⁵. The processing in these cases could also prove new tyres and retreaded tyres should be regarded differently.

3.9. Conclusion

[49] Taking into accounts these essential differences, CRIA is convinced, without recognising the legal and factual grounds for this transition review, that the product scope in the review shall be limited to retreaded tyres only, and new tyres shall be excluded from the scope of the goods subject to review.

[50] Moreover, in case when a product group is included in an overall product scope, it is necessary that the domestic industry produces it, otherwise there is no place for injury from imports.

[51] To the extent the UK industry produces only retreaded tyres, even potentially, it will not be injured by the imports of new tyres from third countries. Thus, the fact that there is a lack of UK production of new tyres supports CRIA's conclusion that the scope of this review must be limited to retreaded tyres only.

4. NO LIKELIHOOD OF RECURRENCE OF DUMPING OR CONTINUATION OF SUBSIDISED IMPORTS AFTER REVOCATION OF THE MEASURES

[52] CRIA maintains that even after revoking the existing anti-dumping and countervailing measures, the alleged likelihood of dumping and continuation of subsidized imports will not occur, based on the number of reasons: (a)there is no excess capacity in the Chinese production, (b)UK is not a priority market to the Chinese exporters and, (3) new tyres market does not overlap retreaded tyres market.

[53] Chinese producers do not have excess capacity to sell to the UK market or elsewhere. According to CRIA's survey, the majority of Chinese manufacturers have no plans to expand production capacity in recent years, which means that the production capacity

²² [Truck and Bus Tires from China | United States International Trade Commission \(usitc.gov\)](#)

²³ [Bus and Truck Radial Tyres originating in or exported from China PR and Thailand | Directorate General of Trade Remedies | MOCI | GOI \(dgr.gov.in\)](#)

²⁴ <http://www.eurasiancommission.org/en/nae/news/Pages/10-09-2014-1.aspx>.

²⁵ <http://www.tas.gov.eg/NR/rdonlyres/805887DA-285E-41FF-930F-2C32A163FC88/3510/noticeonextendingtires.pdf>.

of Chinese lorry and bus tyres will remain stable. Even if a limited number of individual companies have relevant statement that they will expand production capacity, at the same time they have clarified that their plan for expansion is not for the UK market but for other regions. Chinese exporters and manufacturers consistently report to CRIA that the UK market is not within the top five target markets for them.

- [54] Chinese manufacturers are market-oriented, and the UK market is less attractive to Chinese exporters and manufacturers. According to statistics from UN Comtrade and Trade Map in 2022, the UK market only ranked No.31 in the markets for lorry and bus tyres importing from China. Furthermore, the trade between China and nearly 20 other countries can individually reach more than twice of that between China and the UK. On the other hand, the ratio of China's exports to the UK has also declined in the past five years.
- [55] The UK market has limited consumption, which makes it less attractive to Chinese exporters and manufacturers. Again, based on statistics from UN Comtrade, the UK's imports of lorry and bus tires in recent years ranked about 10th in the world, and the market is slightly smaller than or comparable to other developed countries in Europe and much smaller than that of the United States.
- [56] Considering the above comprehensively, CRIA concludes that Chinese producers have no excess capacity to increase the export volume to the UK, and the UK market is not attractive to the Chinese tyre industry. Therefore, even if the antidumping and/or countervailing measures are revoked, there will be no likelihood of recurrence of dumping, or continuation of subsidised imports from China.

5. NO INJURY CAUSED BY THE CHINESE IMPORTS TO THE UK DOMESTIC INDUSTRY

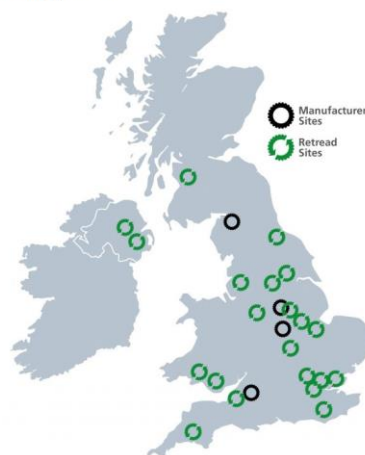
5.1. UK industry definition

- [57] CRIA approaches the injury analysis from the definition of the UK industry which is different in its structure from the EU tyres production industry. It is a commonly known fact that the UK tyres production of lorry and bus tyres is limited to retreaded tyres segment. There is no production of new tyres in the UK.
- [58] This fact is not disputed by the UK industry itself. According to British Tyre Manufacturer's Association (BTMA)²⁶, the UK has four manufacturing plants as shown in Picture 1 below. However, none of them produces new lorry and bus tyres.

Picture 1. – UK tyre manufacturing plants – all sites

²⁶ See details via the link: <https://btmauk.com/about/where-are-tyres-made/>

UK tyre manufacturing plants – all sites



- [59] Specifically, Goodyear/Cooper has a company plant in the Melksham, UK producing consumer, motorcycle and racing tyres.²⁷ The same report confirms that after the merger with cooper. Goodyear is scheduled to close the Melksham plant by the end of 2023.²⁸
- [60] Pirelli maintains two production sites of consumer tyres in Burton-on-Trent and at Dalton Road in Carlisle, which has been recently extended.²⁹
- [61] The fourth plant is Dunlop Aircraft Tyres in Birmingham that produces aircraft tyres and tubes only. This site represents the world's leading specialist aircraft tyre manufacturer and retreader.³⁰
- [62] The European Rubber Journal³¹ confirms the same information regarding tyres production in the UK, which is summarised in the Table reproduced below:

Table 1. – UK production of tyres (all types)

| Company Plant location | Year opened | DOT codes | Employees (u= unionised) | Tire types | Estimated capacity |
|---|----------------|--------------|--------------------------------|---------------|-----------------------|
| UNITED KINGDOM | | | | | |
| Cooper Tire & Rubber Co. Europe Ltd. (Goodyear Tire & Rubber Co.) Melksham, England | | | | | |
| Dunlop Aircraft Tyres Ltd. Birmingham, England | | | | | |
| Pirelli Ltd. (Pirelli & C. S.p.A.) Burton-on-Trent, England Carlisle, England | | | | | |

Explanation of abbreviations

TIRE TYPES: 1 – Auto; 2 – Light truck; 3 – Truck/bus; 4 – Agricultural; 5 – Motorcycle; 6 – Earthmover/OTR; 7 – Industrial; 8 – Aircraft; 9 – Racing

TIRE CONSTRUCTION: R – Radial; B – Bias-ply

PLANT CAPACITIES: u/d – Units per day; u/w – Units per week; u/m – Units per month; u/y – Units per year; t/d – Tons per day; t/w – Tons per week; t/m – Tons per month; t/y – Tons per year

Names in italic following company names are other names by which the companies are known. Names in parentheses indicate the parent companies.

[Summary of Confidential Information: the above table is extracted from the European Rubber Journal (ERJ) – edition November / December 2022, which is only accessible to subscribers. This Table has been partially redacted and detailed figures have been removed from the non-confidential version. The information in the fifth column, under the name “Tire types”, indicates that none of the companies produces tire type 3, which is Truck / bus tyres.]

²⁷See page 95, Goodyear Annual Report 2022 available via the link: https://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_GT_2022.pdf.

²⁸ See page 6, *ibid*.

²⁹See page 159 of Pirelli Annual Report 2022 available via the link: https://corporate.pirelli.com/var/files2022/EN/PDF/PIRELLI_ANNUAL_REPORT_2022_ENG.pdf.

³⁰ See details at <https://www.dunlopaircrafttyres.co.uk/about/>.

³¹ See page 31 of The European Rubber Journal, November/ December 2022.

- [63] The other known tyre producers, such as Bandvulc, a subsidiary of Continental Tyres, Alterever, TTS and others, operates solely the facilities for retreading previously used tyres for lorries and buses.³²
- [64] All above facts lead to the conclusion that there is no UK industry of new tyres for lorries and buses as such, there is only UK industry of retreading old lorry and bus tyres. Such a conclusion, which is not disputed by the UK stakeholders, leads to the conclusion that there is only a UK domestic industry of retreaded tyres.

5.2. UK retreaded tyre industry is in good condition and is not fragile.

- [65] Pursuant to Regulation 99A of the Regulations, the objective of the transition review is to identify whether (i) dumping of the goods or the importation of the goods subject to review would be likely to continue or recur if the anti-dumping amount or countervailing amount were no longer applied to those goods; and (ii) injury to a UK industry in the goods would be likely to continue or recur if the anti-dumping or countervailing amount were no longer applied to those goods.
- [66] In this section, CRIA provides comments as to why it considers that these requirements are not met substantively. It should be noted that these comments should not in any way be interpreted as any implication on CRIA's side in relation to the overall unlawfulness of the measures. In other words, whereas CRIA remains convinced of the unlawfulness of the measures, it still will provide its view as to why, even if the measures were to be considered lawful, their continuation should still be rejected on substantive grounds.
- [67] Given the fact that this transit review has been initiated by the TRA, the investigation's non-confidential records do not contain formal application/complaint providing major aggregated indicators and trends regarding economic performance of the UK industry and general market trends, including consumption, sales and price evolution.
- [68] At current stage of investigation, CRIA has extremely limited opportunities to defend its interest by comments on the substance of injury data. Therefore, CRIA presents here solely fragmented evidence which was collected from open sources and market intelligence. Nevertheless, such fragmented data indicates positive performance of the UK producers of retreaded tyres and even more optimistic expectation for the next years.
- [69] Present substantive comments on alleged injury are without prejudice and do not replace any possible future analysis that CRIA may conduct upon submissions made by other parties or aggregated market data collected by the authority in the course of the investigation.
- [70] BTMA estimates that retreaded tyre industry contributes around £230 million to the UK economy each year and provides 5,500 jobs.³³ The same industry overview confirms

³² See details at <https://btmauk.com/retreading/btma-retread-manufacturers/>.

³³ See industry overview at <https://btmauk.com/retreading/sector-profile/>.

that over 80% of the UK market of retreaded lorry and bus tyres is served by the domestic industry.

- [71] The reports of Bridgestone³⁴ and Continental³⁵ (Appendix 3) also indicate that in 2023, the UK retreaded tyre industry is currently flourishing and is expected to make further breakthroughs in research and development.
- [72] Furthermore, Continental's (one of the UK domestic retreaders) response to the pre-sampling questionnaire demonstrates the positive development trend of the industry, which is expected to be reflected in the responses of other retreaders.
- [73] Such positive outlook for retreader's business in the UK is further confirmed by several other factors. Specifically, since 1 February 2021, UK Construction and Use Regulations do not permit the use of tyres (new or retreaded) over ten years old on the front steered axle(s) of heavy goods vehicles, buses and coaches.³⁶ This regulation forces and will keep forcing logistic companies to change tyres more often; thus, steadily driving the demand up. Also, tyre prices throughout the product range consistently increased in prices since 2020 and this trend is set to persist.³⁷
- [74] Based on above elements, CRIA reconfirms its position that imports of new tyres does not and will not cause injury to the UK domestic industry of retreaded tyres, on the contrary, UK domestic industry is in a healthy condition and is expecting a further positive development.

6. UK ECONOMIC INTEREST TEST

- [75] Pursuant to Regulation 100A(2)(a) of the Regulations, anti-dumping / countervailing measures may only be applied if the UK economic interest test is met. In the context of the UK economic interests, CRIA requests that TRA take into account the interests of UK importers and users of the goods.
- [76] CRIA considers that revoking the existing anti-dumping measures is believed to improve the operating and economic conditions of UK importers, distributors, fleets and consumers. Therefore, it could increase the benefits of the UK economy, as these interested parties in the UK have all indicated that existing anti-dumping / countervailing measures have negative effects on them.

³⁴ See the full text at <https://press.bridgestone-emia.com/en/bridgestones-multi-million-pound-investment-makes-retread-range-hot-property/>.

³⁵ See the full text at <https://www.bandvulc.co.uk/all-news/bandvulcs-contilifecycle-journey-continues-with-new-branding/>.

³⁶ See details at <https://movingon.blog.gov.uk/2020/12/09/ban-on-tyres-over-10-years-old-for-heavy-vehicles-and-some-minibuses/>.

³⁷ See details at <https://newsroom.pricerunner.com/posts/pressreleases/expert-says-tyreing-times-ahead-with-prices-d>.

- [77] According to Institute of Road Transport Engineers,³⁸ the tyre costs for transportation companies increased by 7.9% in 2022 and this trend is set to persist. Such evolution puts a heavy burden on logistics companies since tyres expenses are 2nd to 3rd element in their costs structure, fuel being consistently number one. Obviously, all these cost increases are transferred to the final consumers and contribute to even higher inflation. As can be seen from the website of Office of National Statistics of the UK, -- “Consumer price inflation, UK: June 2023”,³⁹ where the explicit element contributing to inflation and deflation is mentioned, that “*falling prices for motor fuel led to the largest downward contribution to the monthly change in CPIH and CPI annual rates*”. In other words, an overall price reduction on truck tyres will generate a similar with fuel price effect on inflation.
- [78] The current anti-dumping and countervailing measures on lorry and bus tyres in the UK, which have been transitioned from the EU, have significantly impacted the market. The increased duty pressures tyre importers and manufacturers’ business operations, leading to higher tyre prices and shortages. This negative impact of higher prices would ultimately transfer to transporters, fleets and consumers in the UK.
- [79] This and similar developments could be evident by numerous news reports as follows:
- According to the UK tyre magazine Tyrepress in 2018, based on contributions of industry associations such as the NTDA and ITMA as well as key industry figures, European anti-China truck tire tariffs are already having a marked impact on the shape of the market, where the UK was a part of the EU and thus also have been impacted the same. This impact also puts pressure on affected importers and manufacturers alike, and it could also lead to price increases and product shortages.
 - According to a news report on the UK tyre website Tyrenews, European tyre suppliers have expressed the hope that the European Court of Justice’s revocation of the tariff on Chinese TBRs will cause the European Commission to self-reflect, and that the European Commission should recognize that import tariffs on Chinese lorry and bus tyres will only lead to higher prices, thereby adversely affecting transporters, fleets and finally the consumers.
- [80] CRIA notes that revoking existing anti-dumping and countervailing measures could effectively eliminate the above-mentioned adverse effects. For the UK supply chain of TBRs, revoking the current measures would significantly improve the plight of upstream importers and distributors. They will have more choices of tyres, and thus the structure of the UK tyre market will be optimized and improved to create a more competitive environment. For UK downstream vehicle manufacturers, fleets and

³⁸ See details at <https://www.transportengineer.org.uk/transport-engineer-features/operator-costs-in-2022-a-year-like-no-other/249453/#:~:text=Analysis%20of%20annual%20cost%20movements,for%20a%2044%2Dtonne%20truck>.

³⁹ See <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/june2023>

consumers, they could have a more comprehensive choice range and quantity of tyres and could purchase at a lower price.

- [81] To sum up, the revocation of existing anti-dumping and countervailing measures can benefit importers, distributors, fleets and consumers in the UK and can therefore benefit the UK economy in general.

7. CONCLUSIONS AND REQUESTS

- [82] By means of the present written comments, CRIA has first set out its views on the legality of measures and the transition review, which it considers manifestly unlawful. The only possible way for the UK to remedy this situation is to abandon the measures which have originated at the EU level and were annulled by the EU General Court.
- [83] Should the TRA nevertheless decide to maintain the measures, it is absolutely necessary to review its product scope by limiting it only to retreaded tyres product group, as well as to lower the level of duties to reflect the most recent determination of the European Commission, and address legitimate concerns of severely impacted end-users of lorry and bus tyres in the UK.
- [84] CRIA hereby reserves the right to provide further comments and arguments throughout any of the later stage of the proceeding, and remains at entire disposal of the TRA should it need additional information or further clarifications.