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By TRS

NON-CONFIDENTIAL

Dear Mr. Reith, Dear Case Team,

Re: Transition Review TD0035 — *Certain tyres (China): Comments of Hankook Group on the TRA's approach to the selection and use of an appropriate representative third country for the calculation of the normal value*

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

1. INTRODUCTION

1. This letter is filed on behalf of Hankook Group (*Hankook*) in the framework of the above-mentioned transition review initiated by the Trade Remedies Authority (*TRA*) (the *Investigation*), and outlines Hankook's comments with respect to the TRA's approach to the selection and use of an appropriate representative third country for the calculation of the normal value in the Investigation.

2. Hankook refers to the Note to Public File issued by the TRA on 21 September 2023 (the **Note of 21 September 2023**),¹ in which the TRA announced that it had provisionally chosen Brazil as the most appropriate representative third country for calculating the normal value, 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. The TRA concluded the Note of 21 September 2023 by inviting parties with comments on its provisional choice of appropriate representative third country to submit these via the Trade Remedies Service.

3. To this end, Hankook submitted its comments on the TRA's provisional choice of appropriate representative third country on 9 October 2023 (**Comments to the Note**).² In essence, Hankook informed the TRA that Brazil could not reasonably be considered as the appropriate representative third country for the purposes of the Investigation for several reasons, including the fact that (i) Brazil applies trade remedy measures affecting the market relevant to the like goods and (ii) the characteristics of Brazil's industry make it an unsuitable analogue for the Chinese domestic industry.

4. In contrast, Hankook pointed out that Thailand would represent the most suitable representative third country, notably as Thailand has a level of economic development similar to that of China, and at the same time has a substantial industry involved in the production of the like goods. The Thai industry offers the closest substitute for the Chinese domestic industry in several important respects, such as number of producers, production capacity and export volumes of the like goods to the UK.

5. On 15 April 2024, the TRA issued a public notice inviting producers in Brazil to participate in the Investigation "to provide certain sales and cost data" (**Public Notice of 15 April 2024**).³ Any Brazilian producers that wished to participate in the Investigation were invited to register their interest and to submit a completed Third Country Producer Pre-Sampling Questionnaire (**PSQ**) by 25 April 2024. The PSQ was published in the Public File on 16 April 2024.

6. By the present submission, Hankook wishes to register its concern with respect to the approach of the TRA in appearing to reach a definitive decision on the choice of Brazil as appropriate representative third country — and proceeding towards potentially applying Brazilian input cost data to calculate Hankook's dumping margin — without having addressed Hankook's comments or provided any explanation of the reasons underpinning the decision.

7. Hankook maintains the position outlined in its previous submissions to the TRA — notably its Comments to the Note — in which it drew the attention of the TRA to a number of factors weighing heavily against the use of Brazil as appropriate representative third country. By contrast, as pointed out in the Comments to the Note, it is clear that Thailand presents the most suitable choice.

¹ Note to public file – proposed appropriate representative third country, added to the Public File in TD0035 by the TRA on 21 September 2023, available [here](#).

² Submitted via the Trade Remedies Service on 9 October 2023, "2023 10 09_Confidential_Hankook Comments on TRA provisional choice of Brazil as appropriate representative third country".

³ Public Notice, added to the Public File in TD0035 by the TRA on 15 April 2024, available [here](#).

2. THE TRA MUST EXPLAIN THE REASONS FOR ITS CONCLUSION THAT BRAZIL IS THE MOST APPROPRIATE REPRESENTATIVE THIRD COUNTRY IN THIS INVESTIGATION

8. In issuing the Public Notice of 15 April 2024, the TRA is proceeding to implement a definitive decision on its part to select Brazil as the appropriate representative third country for the purposes of the Investigation. This is demonstrated by the TRA's invitation to Brazilian producers to participate in the Investigation — and to thereby provide the TRA with data on costs and sales for use in making its determinations and calculations. In essence, the Public Notice of 15 April 2024 is merely the operationalisation of what appears to have been a prior, unannounced decision.

9. The selection of an appropriate representative third country for the calculation of the normal value is a decision that will inevitably have significant ramifications for the outcome of the Investigation, shaping and largely defining the calculations that will underpin the conclusions reached by TRA. In this sense, the selection of the appropriate representative third country is in essence a preliminary decision, with all substantive determinations ultimately turning on this.

10. In view of the central importance of this preliminary decision and its implications for the interests of interested parties — and moreover acknowledging that the use of an appropriate representative third country represents a significant deviation from the standard approach to use the data of exporting producers in trade remedies investigations — Hankook respectfully submits that the TRA is required to take particular care to ensure the procedural fairness of the Investigation in this regard.

11. The duty of procedural fairness incumbent upon the TRA finds expression in the particular context of the selection of appropriate representative third country through the requirement to provide interested parties with an explanation of the reasons for the decision that is ultimately reached.⁴

12. The TRA has failed to satisfy this requirement in its selection of appropriate representative third country.

13. As noted above, in the Note of 21 September 2023, the TRA expressly invited parties wishing to submit comments on the TRA's provisional choice of Brazil to do so through the channels provided by the TRA. To this end, Hankook submitted its comments to the TRA on 9 October 2023 in the good faith belief that, in doing so, the TRA intended to give conscientious consideration to any comments received before making its decision on the selection of appropriate representative third country.

14. Instead, by the Public Notice of 15 April 2024, published some six months after Hankook submitted its comments in response to the Note of 21 September 2023, the TRA has effectively informed interested parties that it had already taken the decision to confirm its selection of Brazil as appropriate representative third country — and was merely informing interested parties that it was proceeding to implement that decision with the publication of the Third Country Producer Questionnaire on 15 April 2024 and the separate publication of the PSQ on 16 April 2024.

⁴ *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531.

15. Yet, the TRA has failed to engage in any meaningful way with the comments submitted by interested parties in response to the Note of 21 September 2023. This failure to give conscientious consideration to the submissions of interested parties is particularly unreasonable in light of the fact that a majority of interested parties that submitted comments raised substantial concerns with respect to the suitability of Brazil.⁵ These concerns remain unacknowledged by the TRA. Only one interested party — to whom the TRA granted anonymity — argued for Brazil’s selection as appropriate representative third country.⁶

16. In these circumstances, Hankook respectfully submits that the fairness of the Investigation demands a reasoned explanation by the TRA of its selection of Brazil as appropriate representative third country, given the significant implications that this choice holds for Hankook’s interests as the only cooperating exporting producer in the Investigation.⁷ This reasoned explanation must be provided at this stage of the investigation procedure, *before* the publication of the Statement of Essential Facts (**SEF**) — by which point the effects of the TRA’s choice of appropriate representative third country would already be crystallised. By that point in the procedure, the TRA will have already made the dumping calculations underpinning the conclusions contained in the SEF.

3. BRAZIL IS NOT A SUITABLE CHOICE FOR THE CALCULATION OF THE NORMAL VALUE IN THE INVESTIGATION

17. Hankook has consistently sought to inform the TRA that Brazil simply does not offer a suitable choice for use as appropriate representative third country in the Investigation.

18. First, this unsuitability is due to the nature of Brazil’s industry, which is in no way meaningfully comparable to that of China.

19. Hankook respectfully submits that the country which will offer the most suitable surrogate for the country of the exporting producer will be the third country that has a market that is closest in comparison to this, with an industry that is closest to that of the target country in scale and complexion. However, Brazil is not comparable to China in respect of any of the factors relied upon by the TRA in its practice and would, consequently, not offer a suitable appropriate representative third country for the calculation of the normal value.

⁵ See the submissions of Hankook and CRIA, published in the Public File on 28 November 2023, available [here](#).

⁶ See the Anonymous submission on appropriate representative third country, published in the Public File on 28 November 2023, available [here](#).

⁷ *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531.

20. 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,⁸ 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.⁹

21. In the context of the Investigation, however, the application of the criteria used by the TRA 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).¹⁰
- **Limited number of producers of the like goods** — Brazil’s industry involved in the production of the like goods is composed of a relatively very limited number of producers (eight, by comparison with 68 for China).¹¹ The result is a correspondingly less competitive market.
- **Brazil has a relatively much lower proportion of people employed in industry** — while the TRA has previously¹² considered Brazil (21%)¹³ to have a similar proportion of people employed in industry to China (28%),¹⁴ there are several other countries among those considered which have 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.¹⁵ 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.

22. 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 calculating the normal value.

23. Second, Hankook recalls that in its Comments to the Note it has already drawn the TRA’s attention to the TRA’s erroneous conclusion as to the lack of known market distortions relevant to bus and lorry tyres, pointing out that Brazil **does in fact apply trade remedy measures** vis-à-vis imports of bus and lorry tyres, which inevitably impact the Brazilian market.

⁸ AD0012 (Aluminium Extrusions from China), available [here](#).
⁹ AD0021 (Single-mode Optical Fibre Cables from China), available [here](#).
¹⁰ Source: Based on Hankook’s own internal analysis of data acquired from “Tire Business 2022”.
¹¹ Source: “Tire Business 2022”.
¹² AD0012 (Aluminium Extrusions from China), available [here](#).
¹³ Source: World Bank Open Data (as of 25 April 2024), available [here](#).
¹⁴ Source: World Bank Open Data (as of 25 April 2024), available [here](#).
¹⁵ 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.

24. To the best of Hankook’s knowledge, these measures remain in force currently in Brazil.¹⁶ The fact that the measures directly concern the like goods, 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 selecting Brazil as appropriate representative third country.

25. Yet, the TRA has not acknowledged this error or sought to make a correction to any conclusions based on it.

26. In this light, by continuing to base its choice of Brazil on the “*lack of known market distortions relevant to bus and lorry tyres*”¹⁷ without addressing the fact this assumption is actually incorrect, the TRA risks unreasonably basing its decision on irrelevant considerations — while at the same time failing to take into account all relevant considerations, as it is required to do.¹⁸

27. In light of the foregoing, Hankook respectfully submits that Brazil cannot reasonably be considered to offer the most appropriate choice of representative third country.

4. THAILAND WOULD BE MORE APPROPRIATE FOR USE AS REPRESENTATIVE THIRD COUNTRY

28. As Hankook has already submitted in its Comments to the Note, Thailand is the most suitable choice of appropriate representative third country among those identified by the TRA in the Note of 21 September 2023.

29. First, Hankook notes that ample data for Thailand is readily available for use in the calculation of the normal value. In particular, reliable and representative import statistics are available for all the main raw materials used in the production of new tyres, with the exception of natural rubber:¹⁹

Raw Material (HS Subheading)	Thailand - Average Import Price (USD/Kg) (2022)
2803.00	1.68
2817.00	3.26
3812.39	4.79
4002.19	2.04
4002.20	2.08

¹⁶ See, GECEX Resolution No. 198 of 3 May 2021, 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*”, available [here](#).

¹⁷ See, the Note of 21 September 2023.

¹⁸ *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.

¹⁹ Source: Hankook’s calculations based on worldwide yearly import data for Thailand, obtained from the website of the Office of the Permanent Secretary, Ministry of Commerce of Thailand, available [here](#).

4002.39	2.81
4002.70	3.33
7217.30	1.43
7312.10	1.86

30. It should however be noted that the partial unavailability of import data for the HS subheadings covering natural rubber (i.e., HS subheadings 4001.21, 4001.22, and 4002.80) does not pose an obstacle to using Thailand’s data for the construction of the normal value. In fact, it should be recalled that the TRA is not required to rely exclusively on import data for the purposes of constructing the normal value in cases where a finding is made as to the existence of a PMS.

31. Indeed, in its previous practice the TRA has not considered the limited availability of information for certain specific matters in its chosen appropriate representative third country to pose any obstacle to its use of that country for the large part of its work in constructing the normal value. Where limited information has been available on discrete aspects of the normal value calculation, the TRA has used a wide variety of alternative data sources to supplement the data obtained for the chosen representative country.

32. Notably in *AD0012 (Aluminium Extrusions from China)*, the TRA applied the concept of appropriate representative third country in a particularly flexible manner, noting simply that its choice of Brazil was “*prioritised*” as a representative country “*where possible*”. Where there was limited information available for Brazil on certain aspects of the calculation of the normal value, the TRA readily referred to information from other sources and indeed even other countries — notably using data from the United States to obtain benchmark cost information for billet premiums as part of its broader raw material price for aluminium.²⁰

33. It is therefore clear that the TRA can rely on diverse sources of information in applying the concept of appropriate representative third country in constructing the normal value. The use of relevant domestic prices in Thailand for certain types of raw material where there is limited import data available with respect to import prices of natural rubber is perfectly in line with this practice — particularly when there *is* import data available for the vast majority of the main raw materials.

34. Therefore, there is no reason why the TRA should not consider using similar data in the present Investigation, in the event that a benchmark is needed for natural rubber. The data gathering platform Statista, for instance, provides detailed data on the average price of natural rubber in Thailand for the year 2022,²¹ based on price series published by the Thai portal “Rubber Intelligence Unit”.²² The data covers four types of natural rubber, providing a comprehensive view of the relevant domestic market in question:

Rubber type	Price (Thai baht / Kg)
Grade 3 Bangkok ribbed smoked sheet rubber*	67,10
Grade 3 Hat Yai raw rubber sheet	55,33

²⁰ See, Section G.3 of the TRA’s Provisional Affirmative Determination in AD0012 (Aluminium Extrusions imported into the United Kingdom from the People’s Republic of China), published in the Public File on 17 August 2020, available [here](#).
²¹ Statista, “Average price of natural rubber in Thailand in 2022, by type”, 11 April 2023, available [here](#). See **Exhibit 1** – Statista - Average price of natural rubber Thailand – 2022.
²² Rubber Intelligence Unit, “Price of natural rubber (domestic)”, available [here](#).

Bangkok market block rubber*	55,06
Bangkok market concentrated latex*	45,06
Average	55,64

Source: Statista (**Exhibit 1**), KPMG Korea Samjong ERI.

35. Second, another element which supports the choice of Thailand as a representative third country is the availability of financial statements of several Thai producers of new tyres (including the product under review), notably Hwa Fong Rubber (Thailand) Public Company Ltd. ("**Hwa Fong**").²³

36. In conclusion, Hankook would like to reiterate that Thailand is undoubtedly more appropriate than Brazil in terms of economic development and levels of social and environmental protection. Considering these characteristics, the public availability of relevant price and financial information, and the absence of any real methodological obstacles to using the country for benchmark purposes, Hankook respectfully submits that Thailand is the most suitable alternative for representative third country in the context of the Investigation.

5. CONCLUSION

37. For the reasons outlined above, Hankook submits that:

- a. the TRA must provide an explanation for its selection of Brazil as appropriate representative third country and must address the submissions made by interested parties *prior* to the Statement of Essential Facts;
- b. Brazil is manifestly not suitable to be selected as a representative third country; and
- c. Thailand would be the most suitable country for selection as a representative third country for benchmarking purposes.

Yours sincerely,

Gabriele Coppo

²³ See **Exhibit 2** – Hwa Fong Rubber Financial Statement 2022.