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**NON-CONFIDENTIAL**

By TRS

Dear Case Team,

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

**Re:** Transition Reviews TD0035 and TS0036 — *Certain tyres (China): Comments of Hankook on the TRA's Public Notices of 20 December 2023 with respect to decision not to recalculate the anti-dumping/countervailing amount*

## 1. INTRODUCTION

1. 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 reviews initiated by the Trade Remedies Authority ("**TRA**") (the "**Investigations**").

2. Hankook refers to the public notices published by the TRA on 20 December 2023 (the “**Public Notices**”),<sup>1</sup> in which the TRA indicated its position with respect to next steps in the Investigation, and in particular stated that it “*does not expect to undertake detailed recalculations*” of the current anti-dumping and countervailing amounts in the Investigations. According to the Public Notices, the TRA will instead primarily focus on the following issues:

- **TD0035** — whether the dumping of the goods subject to review would be likely to continue or recur if the anti-dumping amount were no longer applied to those goods and whether injury to the UK industry would be likely to continue or recur if the anti-dumping amount were no longer applied to those goods.
- **TS0036** — whether the importation of the subsidised goods subject to review would be likely to continue or recur if the countervailing amount were no longer applied to those goods and whether injury to the UK industry would be likely to continue or recur if the countervailing amount were no longer applied to those goods.

3. The TRA explains this conclusion in the Public Notices, taking into account the fact that, following the notice to public file of 15 November 2023,<sup>2</sup> the TRA “*issued questionnaires to all remaining exporters and overseas producers registered to the case with a deadline of 15 December 2023 to respond. The TRA received no additional questionnaire responses by this deadline*”.

4. Hankook recalls that the notice to public file of 15 November 2023 was merely the last in a series of expansions of the original sample selected by the TRA. And in fact, while Hankook was included in the original sample — and has fully and sincerely cooperated with the TRA since — no other sampled exporting producer has responded to the questionnaire. Rather, successive entities that were sampled by the TRA promptly responded to the notifications of proposed sample to inform the TRA that they would in fact not be providing any response to the questionnaires.<sup>3</sup> As such, Hankook is the only exporting producer to have submitted completed questionnaire responses to the TRA in the Investigations.

5. Thus, in essence the position of TRA with respect to recalculation of the anti-dumping/countervailing amount appears to be based in the first instance on the TRA’s view that it has not received sufficient information to enable it to recalculate these amounts, because only one exporting producer, i.e., Hankook, accepted to cooperate in the Investigations.

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<sup>1</sup> See, Public Notice of 20 December 2023, for TD0035 ([here](#)) and TS0036 ([here](#)).

<sup>2</sup> See, Notice of Extended Sample of 15 November 2023, for TD0035 ([here](#)) and TS0036 ([here](#)).

<sup>3</sup> Shandong Yongfeng Tires Co., Ltd and Shandong Haoua Tire Co., Ltd were originally selected for sampling by the TRA alongside Hankook, see Notification of Final Sample of 11 July 2023, for TD0035 ([here](#)) and TS0036 ([here](#)). Both entities indicated their intention not to submit a questionnaire response. See, letter of Shandong Yongfeng Tires Co., Ltd of 9 August 2023 ([here](#)) and Shandong Haoua Tire Co., Ltd of 11 August 2023 ([here](#)). As a result, the TRA then expanded the selected sample to include Weifang Goldshield Tire Co., Ltd, see Notice of Extended Sample of 22 August 2023 for TD0035 ([here](#)) and for TS0036 ([here](#)). However, by letter to the TRA submitted on 24 August 2023 ([here](#)), Weifang Goldshield Tire Co., Ltd also indicated that it would not be responding to the questionnaire for exporters. The TRA then expanded the sample to include all exporters registered to the case and registered overseas producers of the like goods that did not export during the period of investigation, see Notice of Extended Sample of 15 November 2023, for TD0035 ([here](#)) and TS0036 ([here](#)).

6. In this regard, Hankook wishes to convey to the TRA not only its surprise, but also its considerable disappointment that, having invested significant time and resources in faithfully and sincerely assisting the TRA — most notably by providing it with comprehensive questionnaire responses for four separate entities — the TRA has simply opted not to take this into account to consider the possibility of recalculating the applicable duties, thereby significantly limiting the potential for the measures to be varied or modified.

7. Yet, Hankook notes the broad cooperation that the TRA has received throughout the Investigations, from the UK industry,<sup>4</sup> trade associations<sup>5</sup> and exporting producers. While Hankook was the only exporting producer to submit a completed questionnaire response, it should be recalled that Hankook represents an exceptionally large proportion of all exports of the goods subject to review to the UK — more than [**non-confidential range: 65 – 80 %**]<sup>6</sup> On the basis of the information provided by these various interested parties, it would be entirely possible for the TRA to calculate the non-injurious price for the UK industry (on the basis of the information provided by the UK producers that provided questionnaire responses), as well as the dumping and subsidy margin for Hankook (on the basis of the information provided by Hankook). The TRA's perceived difficulty thus seem to arise only with respect to these calculations for other exporting producers.

8. By this submission, however, Hankook respectfully notes that the fact that only one exporting producer has provided a completed questionnaire response cannot and should not prevent the TRA from recalculating or otherwise amending the applicable anti-dumping and countervailing duties in their current form. To fail to do so would be wholly unreasonable in the present circumstances.

## 2. THE CURRENT DUTIES ARE INHERENTLY FLAWED AND CANNOT IN ANY CIRCUMSTANCES BE MAINTAINED IN THEIR CURRENT FORM — THEY EITHER MUST BE REMOVED ENTIRELY OR MODIFIED

9. The UK's current anti-dumping and countervailing measures which are the subject of the Investigations derive from the need to put in place arrangements to provide for legal continuity of measures that had initially been applied in the UK by virtue of its membership of the European Union. While the UK was an EU Member State — and prior to end of the Brexit transition period on 31 December 2020<sup>7</sup> — the duties were provided for in the UK through the application of EU law instruments, namely Commission Implementing Regulation 2018/1579<sup>8</sup> and Commission Implementing Regulation 2018/1690<sup>9</sup> (together, the “**Original Regulations**”).

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<sup>4</sup> Almost all UK producers including Tructyre, Bridgestone, Continental, Michelin and Vaculug have cooperated in the Investigations.

<sup>5</sup> This includes the British Tyre Manufacturers' Association (**BTMA**), the International Tyre Manufacturers' Association (**ITMA**), and the China Rubber Industry Association (**CRIA**).

<sup>6</sup> See, information provided in Hankook's questionnaire response.

<sup>7</sup> See, Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ([here](#)).

<sup>8</sup> 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 (“**Commission Implementing Regulation 2018/1579**”) ([here](#)).

<sup>9</sup> 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 (“**Commission Implementing Regulation 2018/1690**”) ([here](#)).

10. These measures were then transitioned into UK law at the end of the transition period on 31 December 2020 by Taxation Notice 2020/22,<sup>10</sup> which gave effect to a determination by the Secretary of State for International Trade set out in Notice of Determination 2020/22.<sup>11</sup>

11. However, since this, Commission Implementing Regulation 2018/1579 and Commission Implementing Regulation 2018/1690 have been annulled by the General Court of the European Union. In its *CRIA* judgment, delivered on 4 May 2022,<sup>12</sup> the General Court identified several illegalities with regard to the calculation of the undercutting margin and the analysis of the injury indicators based on the data collected during the initial investigation.

12. Following the annulment of Commission Implementing Regulation 2018/1579 and Commission Implementing Regulation 2018/1690 by the General Court, the Commission partially re-opened both the anti-dumping and anti-subsidy investigations,<sup>13</sup> with a view to bringing the measures into compliance with the General Court's *CRIA* judgment.

13. As a result, on 4 April 2023, the Commission adopted Implementing Regulation (EU) 2023/737<sup>14</sup> re-imposing a definitive anti-dumping duty and Implementing Regulation (EU) 2023/738<sup>15</sup> 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. The updated duties were applied retrospectively, as from 13 November 2018 — prior to the end of the Brexit transition period.

14. In this light, Hankook respectfully submits that the TRA must now use the opportunity of the transition review to take appropriate action to address the inherent defects of the Original Regulations, which were themselves carried over into UK law at the end of the transition period. The TRA cannot simply leave the measures in their current form and maintain them for a further period of up to five years, in circumstances where the TRA is aware that the Original Regulations were the result of a violation of the rights of interested parties — compounding the effects of the original violation. The measures should either be varied or removed in their entirety.

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<sup>10</sup> Taxation notice 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, 31 December 2020 ("**Taxation Notice: 2020/22**") ([here](#)).

<sup>11</sup> 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 ("**Notice of Determination 2020/22**") ([here](#)).

<sup>12</sup> Judgment 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 Commission*, joined cases T-30/19 and T-72/19, EU:T:2022:226 ("**CRIA**") ([here](#)).

<sup>13</sup> See, for the anti-dumping case, AD640a ([here](#)) and for the anti-subsidy case, AS641a ([here](#)).

<sup>14</sup> 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 ([here](#)).

<sup>15</sup> 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 ([here](#)).

**3. THE FACT THAT ONLY ONE EXPORTING PRODUCER HAS COOPERATED DOES NOT PREVENT THE TRA FROM RECALCULATING THE ANTI-DUMPING/COUNTERVAILING AMOUNT WHERE THE LEVEL OF COOPERATION IS HIGH**

15. At the outset, it should be recalled that the rationale of the transition reviews is, first of all, to adapt the transitioned measures to the reality of the UK market. In fact, all trade defence measures transposed into UK law by means of the Taxation Notices adopted pursuant to 96A(1) of the Trade Remedies (Dumping and Subsidization) (EU Exit) Regulations 2019 - including the measures which are under scrutiny in the Investigations - were originally adopted by the European Commission, on the basis of information pertaining to exports to the EU, rather than the UK only. This concerns both the calculation of the dumping/countervailing amounts and the determination of the injury margin on the basis of which the transposed measures were originally determined.

16. Bearing the above in mind, it is evident that, as a rule, in the context of a transition review the TRA should re-determine the relevant dumping/countervailing amounts, as well as the injury margin, with a view to amending (i.e., varying) the measures, as to adapt them to the reality of the UK market. The only reason that justifies the non-variation of the measures would be the unavailability of the information needed to carry out the relevant calculations. This may happen, in particular, in the absence of cooperation from the relevant exporting producers and/or from the UK industry.

17. However, this is clearly not the case. In this regard, it should be noted that the level of cooperation in the Investigations is particularly high. And in fact, as explained above, virtually all the UK producers, several trade associations as well as the main Chinese exporting producer (i.e., Hankook), accounting for more than [non-confidential range: 65 – 80 %] in volume of the total UK imports of goods subject to review, are cooperating in the Investigations.

18. The above conclusion is not called into question by the fact that only one exporting producer has provided a complete questionnaire to the TRA. Cooperation by only one selected exporting producer does not prevent the variation of the measures, and therefore does not justify the preliminary conclusion outlined in the Public Notices. In fact, cooperation by only one exporting producer is sufficient for this purpose, particularly where the volume of exports of the cooperating exporting producer is high.

19. In this regard, Hankook wishes to draw the attention of the TRA to the practice of the European Commission in circumstances where only one sampled exporting producer cooperated in the investigation. Where the level of cooperation by that sole exporting producer was high, the European Commission consistently concluded the investigation, and established an individual duty for that exporter.<sup>16</sup>

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<sup>16</sup> See, for example, Commission Implementing Regulation (EU) 2020/1524 of 19 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain heavyweight thermal paper originating in the Republic of Korea ("**Certain Heavyweight Thermal Paper from Korea (AD659)**") ([here](#)); Commission Implementing Regulation (EU) 2024/209 of 10 January 2024 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel bulb flats originating in the People's Republic of China and Türkiye ("**Bulb Flat from China and Türkiye (AD691)**") ([here](#)); and, Council Regulation (EC) No 1184/2007 of 9 October 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan ("**Persulphates from the United States, China and Taiwan (AD511)**") ([here](#)).

20. This said, if — as Hankook understands — the TRA wishes to differentiate between cooperating and non-cooperating exporting producers in the calculation of the duties, it is indeed open to the TRA to do so. In this regard, suffice it to note that the TRA is entitled to apply “facts available” when calculating the duty that applies to non-cooperating exporting producers (such as those that were selected for sampling and refused to provide a questionnaire response) while still calculating an individual duty for Hankook (on the basis of the information provided in Hankook’s questionnaire response). Such facts available may be obtained by a variety of sources including, *inter alia*, the information provided by interested parties in the framework of the ongoing transition reviews and/or the information provided by the complainants in the original EU investigation. In the alternative, the TRA may arguably decide to leave the duties unchanged for the non-cooperating exporters, while varying the measures applicable to Hankook.

21. The above approach would be in line, for instance, with the standard practice of the United States Department of Commerce (“**Commerce**”) in conducting anti-dumping and anti-subsidy investigations. Where only one exporting producer selected as a mandatory respondent cooperates and the other mandatory respondents do not, Commerce will readily calculate separate duties, applying “facts available” with adverse inferences (“**adverse facts available**” or “**AFA**”) in the calculation of duties for non-cooperating mandatory respondents. The practice of Commerce in selecting the rate for non-cooperating mandatory respondents is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favourable result by failing to cooperate than if it had fully cooperated.<sup>17</sup>

22. An example of this practice can be seen in *Ferrovanadium from the Republic of Korea*.<sup>18</sup> In this case, Commerce selected three companies as mandatory respondents in the investigation. When two of these mandatory respondents failed to respond to Commerce’s questionnaire (or otherwise participate in the investigation), Commerce based their dumping margins on AFA. The result in the investigation was that Commerce calculated separate duties for (i) the sole cooperating mandatory respondent (3.22%), (ii) the non-cooperating mandatory respondents (54.69%), and (iii) “all others” (3.22%).

23. This approach is also followed in anti-subsidy investigations, an example of which can be seen in *Wire Rack from China*.<sup>19</sup> In this investigation, Commerce selected two companies as mandatory respondents required to reply to the anti-subsidy questionnaire — one of which refused to do so. As a result, Commerce again relied on AFA in the determination of the applicable countervailing duty rate for the non-cooperating mandatory respondent. The outcome was the calculation of separate duties for (i) the sole cooperating mandatory respondent (13.3%), (ii) the non-cooperating mandatory respondent (170.82%), (iii) individual rates for other companies (149.91%), (iv) and an “all others” rate (13.3%).

24. Notably, the very same approach is also followed by Commerce in the context of review investigations (i.e., “*administrative reviews*” of existing measures). In assigning an AFA rate in administrative review, Commerce’s practice is to use the highest rate given to any respondent in any segment of the proceeding (i.e., including previous administrative reviews).<sup>20</sup>

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<sup>17</sup> See, Department of Commerce, “*Galvanized Steel Wire from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*”, Federal Register Vol. 76, No. 214, 4 November 2011 ([here](#)), at p. 68416.

<sup>18</sup> Department of Commerce, “*Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*”, Federal Register, Vol. 82, No. 55, 23 March 2017 ([here](#)).

<sup>19</sup> Department of Commerce, “*Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*”, Federal Register, Vol. 74, No. 142, 27 July 2009 ([here](#)).

<sup>20</sup> Department of Commerce, “*Final result of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany*”, Federal Register, Vol. 64, 43342, 10 August 1999 ([here](#)).

25. Hankook submits that this practice should inform the TRA's approach in the Investigations, offering a clear and consistent approach to addressing circumstances where only one exporting producer has cooperated in the investigation. Indeed, as noted at paragraph 7 above, Hankook represents a significant proportion of the overall total exports of the goods subject to review to the UK from China — more than **[non-confidential range: 65 – 80 %]**. By covering such a large share of the overall imports into the UK, the questionnaire response provided by Hankook alone is such as to enable the TRA to draw conclusions not only with respect to Hankook itself but also for all other companies. Moreover, the TRA would have all the necessary instruments and discretionary powers to calculate a separate duty for the Chinese non-cooperating exporters, different from that calculated for Hankook, by resorting to “facts available”.

26. It follows that the mere fact that only one single exporting producer (i.e., Hankook), representing more than **[non-confidential range: 65 – 80 %]** of total imports, cooperated in the investigation by providing a questionnaire response can in no way justify the TRA's preliminary decision outlined in the Public Notices.

#### **4. THE INFORMATION AVAILABLE TO THE TRA WOULD ALLOW IT TO AMEND THE FORM OF THE MEASURES**

27. Finally, Hankook wishes to recall the arguments put forward in section 5 of its Product Exclusion Request, submitted to the TRA on 20 October 2023, in which Hankook argued that a variable duty in the form of a variable duty (enforcing a minimum import price) would be the most appropriate form of measure in the case at hand. Hankook respectfully reiterates this argument in the present submission and further submits in the current context that the information received by the TRA from UK industry to date is such that the TRA already has at its disposal the necessary information to allow it to do so.

28. Crucially, not even Hankook's information would be necessary for this purpose. The information provided by UK producers would be more than sufficient to allow the TRA to undertake a variation of the form of the duties, so as to transform them into a variable duty with reference import price set at the level of the non-injurious price.

29. Such a variable duty would ensure that prices of the goods subject to review would be brought to a non-injurious level. Such an approach would offer an effective approach to addressing the inherent flaws in the measures identified in Section 2 of the present submission, while also avoiding any adverse effects that anti-dumping/countervailing measures might have on the prices of the UK industry, as detailed in Hankook's Product Exclusion Request.

#### **5. CONCLUSION**

30. Hankook respectfully submits that above all, the TRA cannot simply leave the applicable anti-dumping and countervailing duties in their current form. As they currently are, the measures give effect in UK law to defects deemed sufficiently serious by the General Court to warrant its intervention in a domain in which the European Commission traditionally enjoys a particularly broad margin of discretion. By refusing to recalculate the anti-dumping and countervailing amounts, the TRA would risk further exacerbating the effects of an illegality that has now been addressed in the legal order in which it originated.

31. The creation of the transition review procedure in UK law affords the TRA a unique opportunity to ensure that a measure that has been transitioned from EU law into UK law (first and foremost to provide for continuity of legal effect) is properly and effectively adapted to the specific context of UK law in which it must operate. This process of adaptation must also conceivably include a recognition of the possible need to address “inherited” defects in a measure, which might be discovered subsequent to the measure being transitioned to UK law. Hankook requests that the TRA take the opportunity presented to it in the current context to address the defects in the measures — by either removing these altogether or at a minimum varying their application. The duties in their current form cannot reasonably be maintained.

Yours sincerely,

Gabriele Coppo