

**DENTONS**

**JT&N** 金诚同达

# UK Transition Review of Anti-dumping and Countervailing Measures on Certain Pneumatic Tyres Used for Bus or Lorries Originating in China - TD0035, TS0036

on behalf of

**China Rubber Industry  
Association (CRIA)**

19 April 2024

**Non-Confidential Version**

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# Introduction and procedural issues (I)

11 August 2017 ,  
14 October 2017

Initiation of EU original AD and AS investigations – AD640, AS 642

22 October 2018,  
12 November 2018

EU28 imposed original AD and CVD measures

28 November – 30 March  
2017 2018

DTI's initiation of "Call for Evidence"

2 May  
2019

Issuance of final findings of "Call for Evidence"

3 May  
2023

Initiation of transition reviews – TD0035 and TS0036 by TRA

# Introduction and procedural issues (II):

Initiation and Definitive measures of

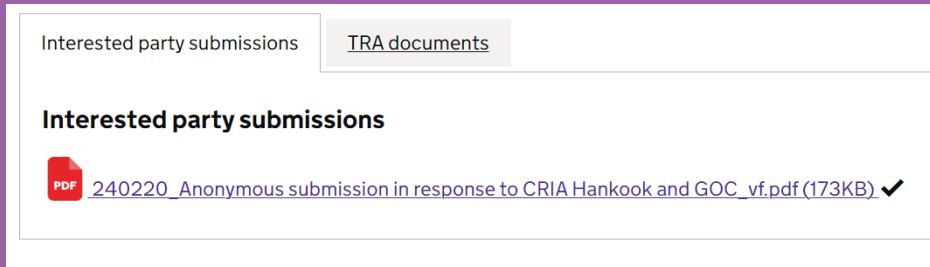
Re-opening of the EU investigations, based on the judgement of the General Court of the European Union

- 5 May 2022      The General Court annuls the EU's original AD and CVD measures imposed by the European Commission (T-30/19 and T-72/19)
- 8 July 2022      Initiation of re-opening of the anti-dumping and anti-subsidy investigation, as the European Commission's implementation of the General Court's judgement.
- 5 April 2023      (revised) Definitive measures, with much lower duty levels

# Introduction and procedural issues (III)

29 Nov 2023 UK Producer's Questionnaire Response (non-confidential version only shows sections starting from section F, without disclosing the identity of the UK Producer.

23 Feb 2024 Anonymous Documents – Anonymous submission in response to CRIA Hankook and GOC.



[Example of the practice of the European Commission in a recent anti-dumping investigation in relation to anonymity request. Confidential information relating to that case has been removed.]

## Discussion on “Anonymity of Certain Interested parties”

- Can an interested party withhold its identity?
- Regulation 45 of the UK Trade Remedies (Dumping & Subsidisation) (EU Exit) Regulations 2019, as amended- how to request and disclosure « Confidential Information »
- Anonymous submission without justification : violation of other parties's right of defence
- Practice of the European Commission: anonymity might be granted only to those companies that showed a good cause and demonstrated and substantiated the risk of retaliation. Such request must be individually examined, which might lead to either approval or rejection. (see example in an EU proceeding)

# Introduction and procedural issues (IV)

External Case Timeline: (when initiated)

## Discussion on “Timeline”

Milestone	Date
Initiation	3 May 2023
Deadline to register an interest	18 May 2023
Questionnaires issued	June 2023
Deadline for receipt of questionnaires	30 calendar days from date questionnaires are issued
Verification	August – November 2023
Publication of Statement of Essential Facts	February 2024
Final Recommendation	August 2024

External Case Timeline: (with the most recent update of 15 April 2024)

Milestone	Date
Initiation	3 May 2023
Deadline to register an interest	18 May 2023
Questionnaires issued	July 2023
Deadline for receipt of questionnaires	10 August 2023
Verification	November 2023 – March 2024
Publication of Statement of Essential Facts	July 2024
Final Recommendation	January 2025

- Legimated expectations of all interested parties
- Will the current version of the timetable be updated again?
- In the context of the « public notice » of 15 April 2024: TRA now does expect to recalculate the anti-dumping and countervailing amount (new development, contrary to the conclusion in TRA’s previous notice in December 2023)
- Pre-sampling questionnaire and producer’s questionnaire (for third country producers) just been published.
- Response to questionnaire, deficiency letters, Verification... (of the new information) may take some time....
- The combined AD+CVD transition review proceedings are expected to last a very long period of time.

# Nature of Transition Review (I)

## CRIA doubts if the UK could be regarded as a legal successor to the EU under international agreements

18.1.2021

EN

Official Journal of the European Union

C 18/41

### Notice 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

(2021/C 18/11)

End of Transition Period: December 31, 2020

On 31 January 2020, the United Kingdom withdrew from the Union. The Union and the UK jointly agreed on a transition period during which the UK remained subject to Union law ending on 31 December 2020<sup>(1)</sup>. The end of the transition period has the following consequences for existing trade defence measures and ongoing investigations. 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. Should any investigations pending on 1 January 2021 lead to measures, these will apply only to imports into the twenty-seven Member States of the European Union<sup>(2)</sup>.

Aspects of EU trade defence in relation to Part 3 of the Withdrawal Agreement and the Ireland/Northern Ireland Protocol will be the subject of a separate notice.

The EU specifically set out in its Official Journal published on 18 January 2021, that the **transition period** which the UK remained subject to Union law **ended on 31 December 2020**.

All anti-dumping and anti-subsidy measures in force applied from 1 January 2021, only to imports into the **twenty-seven Member States**.

# Nature of Transition Review (II)

## CRIA doubts if the UK could be regarded as a legal successor to the EU under international agreements



The screenshot shows the top navigation bar of the European Commission website, including the logo, language selector (English), and search bar. Below the navigation bar is a breadcrumb trail: Home > Strategy and policy > Relations with non-EU countries > Relations with the United Kingdom > The EU-UK Trade and Cooperation Agreement. The main heading is 'The EU-UK Trade and Cooperation Agreement' with a sub-heading: 'Protecting the European Union's interests, ensuring fair competition, and continued cooperation in areas of mutual interest'. The page content is organized into a table with two columns: a left column for 'PAGE CONTENTS' and a right column for the main text.

PAGE CONTENTS	
<a href="#">Free Trade Agreement</a>	The EU-UK Trade and Cooperation Agreement concluded between the EU and the UK sets out preferential arrangements in areas such as trade in goods and in services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in Union programmes. It is underpinned by provisions ensuring a level playing field and respect for fundamental rights.
<a href="#">New partnership for our citizens' security</a>	
<a href="#">Horizontal agreement on Governance</a>	While it will by no means match the level of economic integration that existed while the UK was an EU Member State, the Trade and Cooperation Agreement goes beyond traditional free trade agreements and provides a solid basis for preserving our longstanding friendship and cooperation.
<a href="#">Complaints</a>	The Trade and Cooperation Agreement was signed on 30 December 2020, was applied provisionally as of 1 January 2021 and entered into force on 1 May 2021.
<a href="#">Press material</a>	

The *EU-UK Trade and Cooperation Agreement* revealed that after Brexit, trade related aspects need to be settled by a mutually agreed agreement, instead of automatically applying measures the UK used to enforce when being a member of the EU.

# Nature of Transition Review (III)

## Article 1 and 6 of WTO Anti-Dumping Agreement (WTO ADA)

### *Article 1*

#### *Principles*

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated<sup>1</sup> and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

### *Article 6*

#### *Evidence*

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

# Nature of Transition Review (IV)

## Article 2.1 and 3.1 of WTO Anti-Dumping Agreement (WTO ADA)

### Article 2

#### Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

### Article 3

#### Determination of Injury<sup>9</sup>

3.1 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.

2

1

4

3

# Nature of Transition Review (V)

## Article 5 of the WTO ADA

Revealing that the initiation of UK Transition Review is not representative of, or supported by, the domestic industry

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed<sup>13</sup> by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.<sup>14</sup> The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

## Inconsistency with Art. 5.4

The reviewing authority (UK TRA) in the current transition review skipped the "representation" requirement and by a *proprio motu* initiation, the "representation" requirement is omitted.

# Nature of Transition Review (VI)

Article 5 of the WTO ADA  
Revealing that the initiation of UK Transition Review  
proceeds without sufficing the required evidentiary threshold

## Article 5

### *Initiation and Subsequent Investigation*

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

## Inconsistency with Art. 5.6

The reviewing authority (UK TRA) proceeds without sufficient or any *prima facie* evidence of dumping, injury and a causal link to justify the initiation of an investigation.

No relevant factual information regarding UK industry has thus far been disclosed by the authority.

# Particular Market Situation (I)

Regulation 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 specifies the scope of PMS:

A “particular market situation” includes situations where –

- (a) prices are artificially low;
- (b) there is significant barter trade;
- (c) prices reflect non-commercial factors.



None of these scenarios exists in the Chinese bus and lorry tyre industry

# Particular Market Situation (II)

## - Comments on the Choice of an Appropriate Third Country

1. Closer Level of Economic Development to China

- The life expectancy at birth
- The newest poverty ratio

2. The similarity of the production industry and market competitiveness



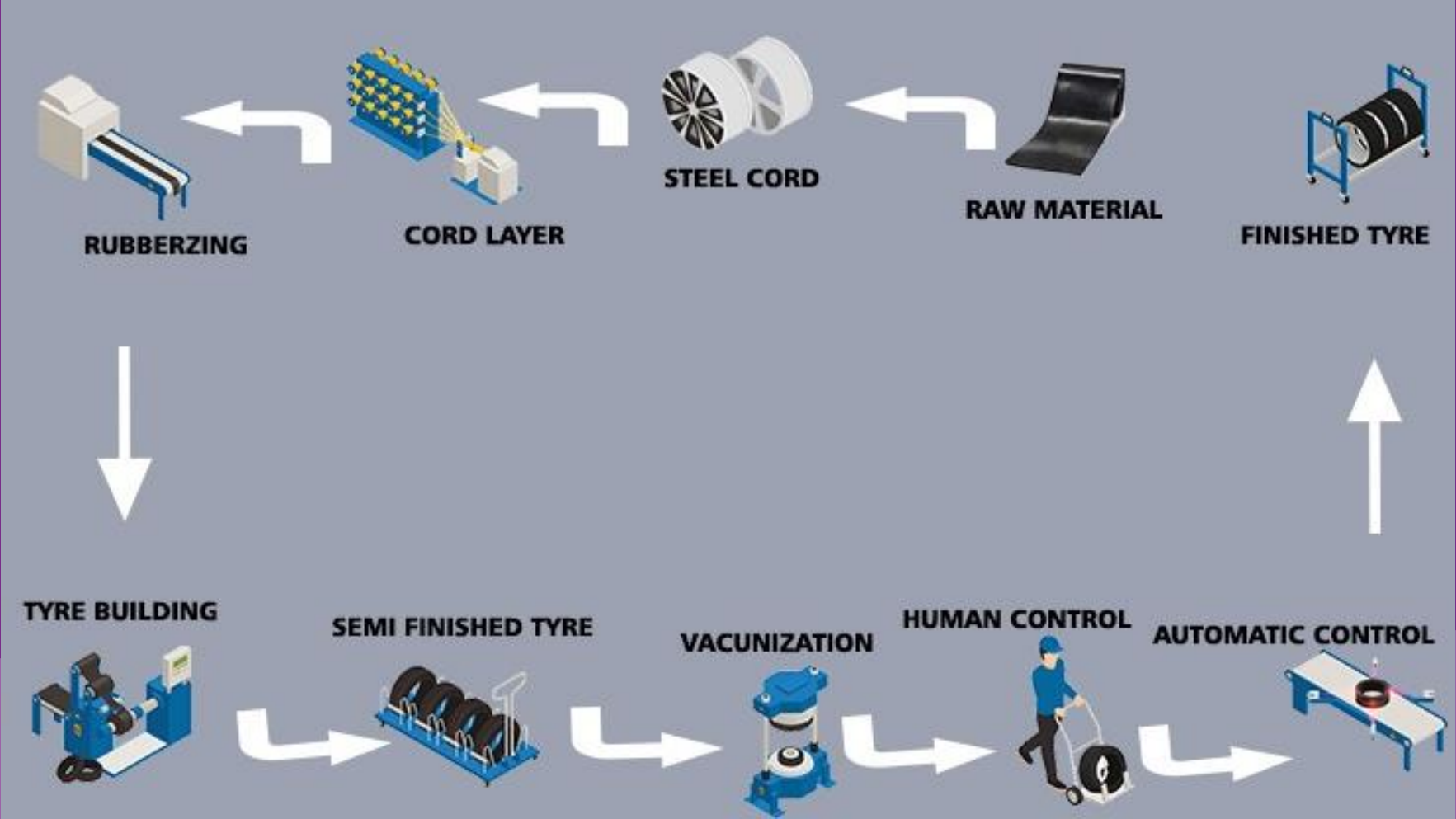
Thailand is better than Brazil to be the Most Appropriate Representative Country

3. The similarity of trade remedy measures history

4. Information Accessibility

# Differentiation: product and market (I)

New tyres production process:



# Differentiation: product and market (II)

Tyre's retreading process:



# Differentiation: product and market (III)

	New Tires	Retreaded Tires
Manufacturing Process	Made entirely from new materials	Worn tire casing undergoes buffing, inspection, and application of new tread rubber
Cost	Higher	Lower
Durability & Lifespan	Longer tread life and overall lifespan	Can offer similar tread life to new tires, but overall shorter due to potential casing limitations
Appearance	Pristine condition with new tread design	May have minor imperfections, but the tread design should be identical to the original new tire
Main Use & Application	Ideal for new vehicles, high-performance applications (e.g., long-distance hauling), safety-critical applications (e.g., school buses)	Suitable for most commercial vehicles, particularly cost-conscious fleets, regional and urban applications
Sales Channels	Widely available through tire dealerships, automotive parts stores	Primarily sold through specialized retreading facilities or commercial tire distributors
Consumer Perception	Premium option, offering optimal performance and safety	Economical alternative, perception of safety can vary depending on awareness of retreading regulations
Commodity Codes	40 11 20 90 00	40 12 12 00 10

# Differentiation: product and market (IV)

## Case C-322/81 Michelin v. Commission

- **Parties:** NV Nederlandsche Banden Industrie Michelin v Commission of the European Communities
- **Judgement Date:** 9 November 1983
- **Held:** New tyres and retreads are not regarded as wholly interchangeable as many consumers consider that the use of retreads entails a safety risk. Therefore limits are frequently imposed on the use of such tyres.

*( BB ) THE TAKING INTO CONSIDERATION OF COMPETITION FROM RETREADS*

*46 IN ORDER TO PROVE THAT ITS MARKET SHARE IS LESS THAN THE COMMISSION CLAIMS THE APPLICANT ALSO CONTENDS THAT THE COMMISSION ARBITRARILY EXCLUDED RETREADS FROM THE RELEVANT MARKET ; IN THE APPLICANT ' S VIEW THESE OFFER CONSUMERS A GENUINE ALTERNATIVE AS REGARDS BOTH QUALITY AND PRICE . TO SUPPORT THAT ARGUMENT MICHELIN NV PRODUCES A NUMBER OF CALCULATIONS INTENDED TO SHOW THE COMPETITIVENESS OF RETREADS COMPARED WITH NEW TYRES .*

*47 IN THE COMMISSION ' S VIEW , RETREADS MUST BE EXCLUDED FROM THE RELEVANT MARKET BECAUSE THEY CANNOT REPLACE NEW TYRES . THIS , IT ARGUES , IS FIRST OF ALL BECAUSE CONSUMERS CONSIDER THEM INFERIOR IN TERMS OF SAFETY ; SECONDLY MOST RETREADS ARE PRODUCED TO ORDER FOR THE TRANSPORT UNDERTAKINGS THEMSELVES SO THAT THE MARKET IN QUESTION IS ONE FOR THE SUPPLY OF SERVICES ; LASTLY , SINCE RETREADS ARE A SECONDARY PRODUCT AS COMPARED WITH NEW TYRES , WHICH ARE , AS IT WERE , THE RAW MATERIAL FOR RETREADING , WHICH LARGELY PREVENTS THEM FROM BEING REPLACED BY RETREADS , COMPETITION MUST BE ASSESSED ON THE PRIMARY MARKET , WHICH IS THE KEY TO THE WHOLE MARKET .*

# Differentiation: product and market (V)

## COMP/E-2/36.041/PO — Michelin

- Commission Decision of 20 June 2001 relating to a proceeding pursuant to Article 82 of the EC Treaty
- **Held:** the new tyre market was not subject to competition from retreads to an extent sufficient significantly to alter competitive conditions.

The Commission confirmed this reasoning in a later case, stating that in the previous decision "the Commission defined the relevant market as the market in new replacement tyres for trucks and buses. The Court subsequently confirmed the Commission's conclusion that the new tyre market was not subject to competition from retreads to an extent sufficient significantly to alter competitive conditions and Michelin's dominant position on the market. This analysis is still valid, as confirmed by Michelin during the investigation (in reply to requests for information from the Commission)."<sup>15</sup> The Commission continued:

# Differentiation: product and market (VI): product scope in other trade jurisdictions

US: The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tubetype, tubeless, radial, or non-radial.

India: new/unused pneumatic radial tyres, with or without tubes and flaps of rubber used in buses and lorries/trucks.

Eurasian Economic Union: Truck tyres, which are pneumatic rubber tyres and tyres designed for use on various axles of trucks, buses, trolleybuses, dump trucks, trailers and semi-trailers, new.

Egypt: New pneumatic tyres, of rubber, of a kind used for buses and lorries

# NO LIKELIHOOD OF DUMPED OR SUBSIDISED IMPORTS RECURRENCE

(1) No excess capacity in the Chinese production; China's TBT production remains sufficient and capacity utilization has increased after Covid-19.

(2) UK is not a priority market to the Chinese exporters

(3) No overlap with UK retreaded tyres market

ITC TRADE MAP  
Trade statistics for international business development  
Monthly, quarterly and yearly trade data. Import & export values, volumes, growth rates, market shares, etc.

Home & Search Data Availability Reference Material Other ITC Tools More

Product: 40112000 - New pneumatic tyres, of rubber, of a kind used on buses or lorries  
Country: China  
Partner: All  
other criteria: Exports Yearly time series by country Direct data Values US Dollar

Product Group: None  
Country Group: None  
Partner Group: None

List of importing markets for a product exported by China  
Product: 40112000 New pneumatic tyres, of rubber, of a kind used on buses or lorries

Unit: US Dollar thousand

Table Graph Map Companies

Download: [Icons] Time Period (number of columns): 5 per page Rows per page: 300 per page

Bilateral & digits	Importers	Exported value in 2019	Exported value in 2020	Exported value in 2021	Exported value in 2022	Exported value in 2023
	World	7,350,036	6,598,855	8,014,879	9,189,252	10,087,146
	Mexico	336,845	339,999	466,347	654,222	728,733
	Russian Federation	173,508	162,333	231,264	428,571	461,174
	United States of America	649,489	497,557	626,607	676,607	448,361
	United Arab Emirates	350,482	226,206	322,588	353,831	438,657
	Saudi Arabia	317,894	314,222	317,741	78,989	438,250
	Malaysia	145,519	151,034	205,422	38,022	320,079
	Iraq	169,716	167,781	175,800	269,509	315,186
	Australia	243,557	243,517	301,794	316,757	303,181
	Indonesia	126,813	111,023	175,419	241,878	269,002
	Nigeria	207,673	203,339	229,330	211,025	259,705
	Canada	183,369	172,818	225,006	294,309	236,672
	Philippines	189,016	167,216	220,087	215,932	211,782
	Paraguay	107,877	76,819	147,591	145,360	210,698
	Viet Nam	151,936	160,231	200,417	225,069	210,563
	Chile	132,317	127,906	172,978	165,850	169,010
	Korea, Republic of	128,236	132,485	157,535	148,753	163,140
	Brazil	54,950	44,720	123,115	133,257	162,420
	Pakistan	157,307	203,806	194,357	219,499	161,106
	South Africa	117,988	96,774	133,352	127,311	151,407
	Colombia	94,491	81,842	106,603	137,125	141,413
	Peru	96,291	96,254	114,366	114,384	138,774
	Tanzania, United Republic of	74,178	75,810	97,589	123,654	131,234
	Algeria	138,951	115,474	79,746	124,958	125,352
	Ghana	61,523	85,501	85,775	85,160	119,813
	Kenya	70,855	82,706	86,840	93,878	114,375
	Egypt	69,821	71,264	96,760	86,565	111,009
	Japan	90,355	85,570	107,705	115,889	108,011
	United Kingdom	71,465	62,700	74,283	73,601	101,826

Exported Value in 2023

UK

Note: trademap.org is a publicly available website, developed by the International Trade Centre UNCTAD/WTO (ITC)

## COMPLAINANT'S CLAIM (I)

*“In 2022, at least 1.5 million units of additional TBR production capacities had already been added, as reported by the CRIA. This puts the total TBR production capacity at around 143.25 million units/year for 2022. If the same capacity utilisation rates were taken as for the year 2021, this would bring output at around 123.67 million tyres produced. The available unused capacity in China in 2022 therefore amount to almost 20 million units.”*

## CRIA'S REBUTTAL COMMENT -- ON PROCEDURE

1. No data sources - unable to verify the information.
2. Data source mismatch - covering all tire types instead of only TBT.

# CRIA'S REBUTTAL COMMENT- ON SUBSTANCE

**The capacity utilization rate of 2021 is not a reliable indicator for 2022 and beyond.**

1. In post-pandemic era, tire demand surged, with tire production in China significantly increasing.
2. Linglong Tire operates above 80% capacity; Sentury and Triangle Tire plants run at full capacity and continuously receive ample orders.

## COMPLAINANT'S CLAIM (II)

*“The total planned additional capacities would account for a total estimated capacity increase of 33.1M units. As a result of these increases, China's total production capacity of the goods subject to review is forecasted to reach a staggering 172.3M units per year.*

*In the meantime, domestic consumption in China is not expected to exceed 70 to 80M units per year.”*

## CRIA'S REBUTTAL COMMENT – ON PROCEDURE

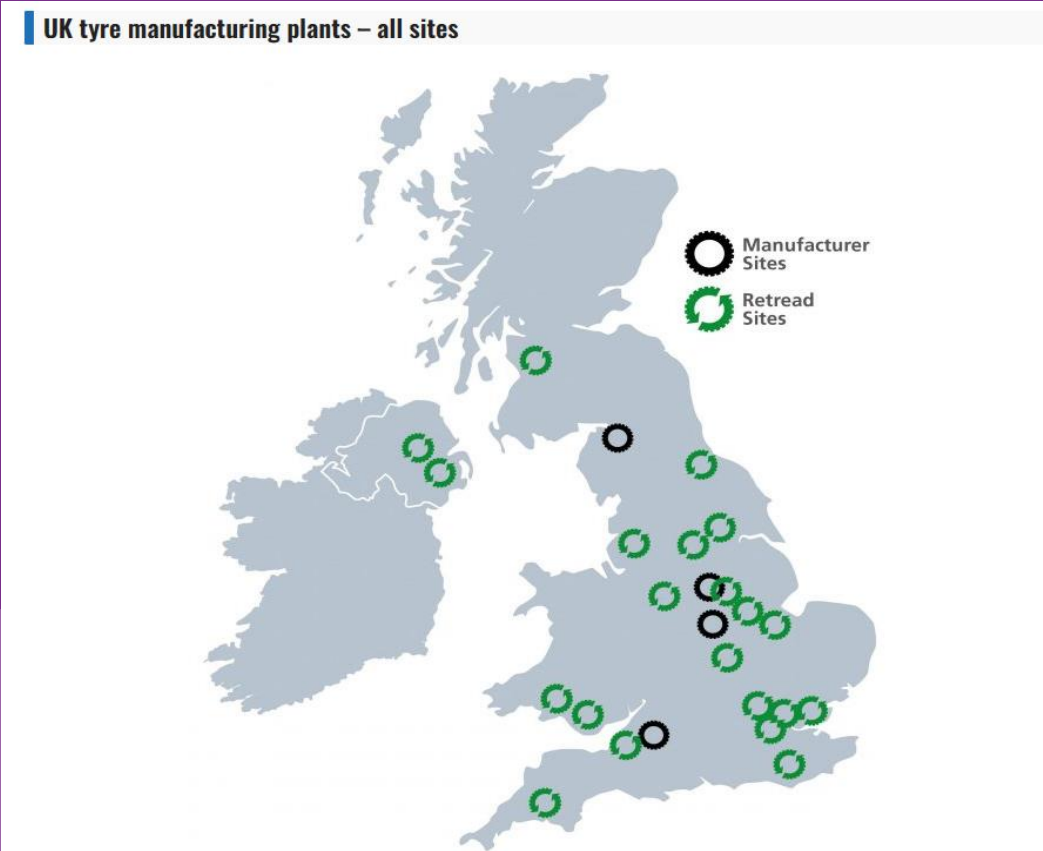
No data sources - The petitioner did not disclose data sources or provide a reasonable summary, compromising the respondents' defense rights.

# NO INJURY TO THE UK TYRE RETREADERS (I)

No new tyres industry to protect in the UK

The UK only offers retreading service

[Summary of Confidential Information: the 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.]



Company	Plant location	Year opened	DOT codes	Employees (u= unionised)	Tire types	Estimated capacity
<b>UNITED KINGDOM</b>						
<b>Cooper Tire &amp; Rubber Co. Europe Ltd.</b> (Goodyear Tire & Rubber Co.)	Melksham, England					
<b>Dunlop Aircraft Tyres Ltd.</b>	Birmingham, England					
<b>Pirelli Ltd.</b> (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

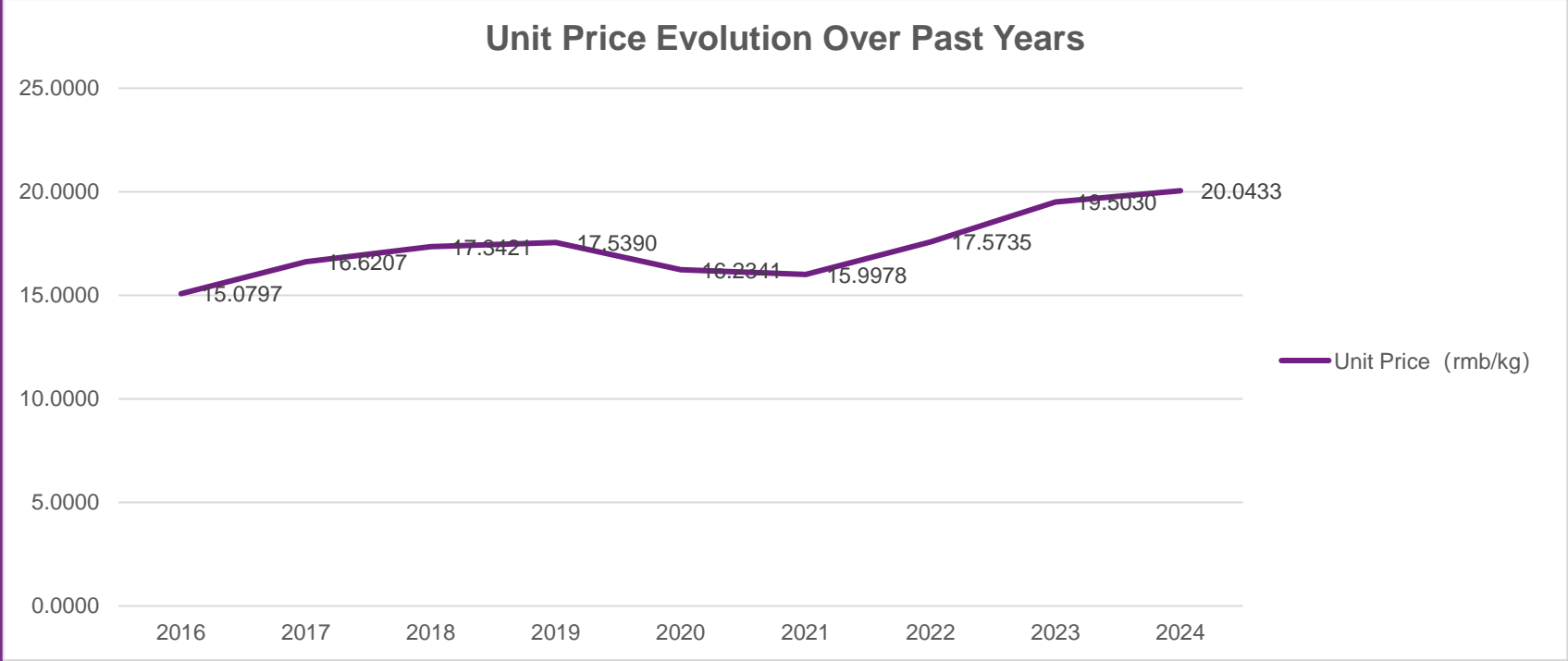
**TIRE CONSTRUCTION:** R – Radial; B—Bias-ply

**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.**

# NO INJURY TO THE UK TYRE RETREADERS (II)

## CUSTOMS DATA FOR EXPORTING TO THE UK



Data Source: General Administration of Customs of China at <http://stats.customs.gov.cn>. Publicly available without subscription.

A upward trend in export price over past years.

# NO INJURY TO THE UK TYRE RETREADERS (III)

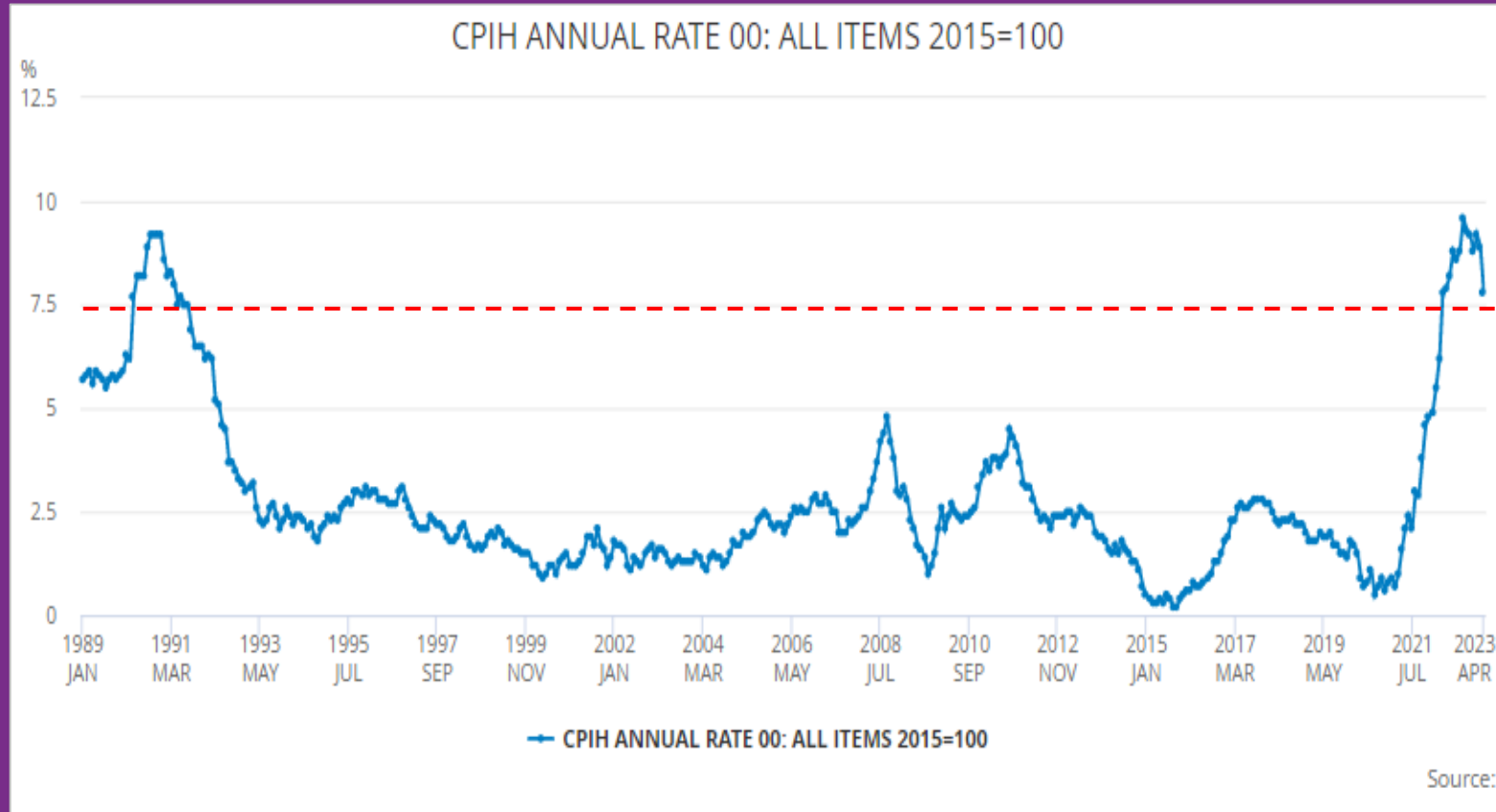
## CUSTOMS DATA FOR EXPORTING TO THE UK



Data Source: General Administration of Customs of China at <http://stats.customs.gov.cn>. Publicly available without subscription.

The overall trend in China's export volume has been declining over the past years, with a slight increase in the past year.

# UK ECONOMIC INTEREST TEST



The UK's consumer prices index (CPI) shows a historically high level of inflation rate over the past 35 years

Tyre costs impact over half of the running costs incurred by transportation companies.

# TRA'S RECENT PRACTICE IN TRANSITION REVIEWS

## TS0023 - Transition Review of Countervailing Measures on Stainless Steel Bars and Rods from India

- Final determination published on 15 June 2023
- Injury is unlikely to occur if the countervailing measures were no longer applied.
- Final Determination: Revocation of the CVD measures, including cooperating Indian exporter and "*all other exporters*".

## TD0027 - Transition Review of Anti-dumping Measures on Ceramic Tiles from China

- Statement of Essential Facts (SEF) published on 19 February 2024
- Based on SEF, recommend variation of the original anti-dumping measure;
- Partial revocation of the measure to certain ceramic tile products
- Exclude certain ceramic tile products from the measure, applicable to products that is not manufactured in the UK.

# CONCLUSIONS AND REQUESTS (I)

The current anti-dumping and countervailing measures and transition reviews remain doubtful on legality.

New and retreaded tyres are distinct products. There is no industry producing new tyre for buses and lorries in the UK.

Continuing the measures would not be in the UK's broader economic interests.

To restore legality and redress the situation, the current measures imposed by the EU should be abandoned or, if warranted, to be replaced with a fact-based investigation conducted by TRA.

Should the TRA decide to maintain the measures, it is necessary to review its **product scope** by limiting it only to retreaded tyres, as well as to lower the level of duties to mirror the updated duty level in the EU, and to address the actual injury only.

## CONCLUSIONS AND REQUESTS(II)

- Request to contact importer to obtain more information about retreader in the UK.
- Given that there is no domestic producer of new tyres in the UK and no domestic industry to protect, please consider the CRIA's arguments on product exclusions and also consider the requests raised by the cooperating exporter.
- Request for reconsideration of the AD/CVD duties, including the Chinese cooperating exporter and the Chinese companies that are represented by CRIA.



**Any questions?**

**Chinese industry is here to address them.**

**Thank you!**