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NON-CONFIDENTIAL

By **TRS**

Dear Mr Reith, 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 Review TS0036 — *Certain tyres (China): Submission related to the countervailable subsidies*

1. INTRODUCTION

This letter is filed on behalf of Chongqing Hankook Tire Co. Ltd. (**CHKT**), Jiangsu Hankook Tire Co. Ltd. (**JHKT**), Hankook Tyre UK Ltd, and Shanghai Hankook Tire Co. (**SHT**), Ltd (collectively – and together with their subsidiaries, parent and sister companies – referred to as **Hankook** or **Hankook Group**) in the framework of the above-mentioned transition review initiated by the Trade Remedies Authority (**TRA**) (the **Investigation**).

The purpose of this submission is to provide clarifications on the nature of certain subsidies which were reported in the questionnaire response of CHKT, JHKT and SHT. In particular, this submission will explain why certain schemes that were reported in the questionnaire responses for mere sake of completeness shouldn't be considered as countervailable subsidies in the sense of Part 3, Chapter 2 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the **Regulations**).

Furthermore, this submission provides Hankook's observations on the methodology which should be followed in calculating the benefit conferred for the land-use rights and the use of electricity, in line with the WTO law and practice.

2. SUBSIDIES REPORTED IN SECTIONS D2 AND D3

2.1 General framework

According to Regulation 19(1) the TRA must determine whether goods that are imported into the United Kingdom are subsidised. More specifically, under Regulation 19(2) "*the TRA must determine (a) whether a countervailable subsidy within the meaning of paragraph 3 of Schedule 4 to the Act exists in relation to goods (imported into the United Kingdom); and (b) the amount of the subsidy that is attributed to those goods."*

Pursuant to Regulation 21(2), "*the TRA must determine whether a person has directly or indirectly had a benefit conferred by a financial contribution*". Therefore, a subsidy which does not benefit the goods imported into the UK cannot be taken into consideration in the calculation of Hankook Group's subsidy amount.

Moreover, as regards the subsidies which benefit (*inter alia*) the product under review imported into the UK, it should be noted that only the subsidies which are countervailable should be taken into account in the calculation of Hankook Group's subsidy amount.

As set out in Chapter 2 of the Regulations (entitled "*Determination of whether there is a countervailable subsidy*"), countervailability of a subsidy under UK law depends on the fulfilment of the following cumulative conditions:

- (i) a foreign authority makes a financial contribution (Regulation 20);
- (ii) a financial contribution by a foreign authority confers a benefit (Regulation 21);
- (iii) the subsidy should be specific (Regulation 22).

In case a given scheme does not meet the above conditions, and in particular the condition set out in point (iii) above (i.e., specificity), such scheme cannot be considered in the determination of the countervailable subsidy amount in the sense of Chapter 3 of the Regulations.

In this regard it should be recalled that, according to Regulation 22(2), "*in order to determine whether or not a subsidy is specific, the TRA must consider whether—*

- (a) *the subsidy is explicitly—*
 - (i) *in terms of access, limited to certain enterprises or industries;*
 - (ii) *contingent on export performance;*
 - (iii) *contingent on the use of domestic over imported goods;*
 - (iv) *limited to a specific geographical region within the jurisdiction of the granting authority; or*

(b) *the subsidy is in fact applied in a specific manner.*" (emphasis added).

Regulation 22(4) provides the following clarification: "[w]hen determining whether or not a subsidy is specific, in addition to the matters referred to in paragraph (2), the TRA must consider—

- (a) *whether the foreign authority establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy;*
- (b) *whether the criteria or conditions are clear and verifiable;*
- (c) *whether the terms of the subsidy are strictly adhered to;*
- (d) *whether eligibility for the subsidy is automatic; and*
- (e) *any other factors it considers relevant.*" (emphasis added).

Bearing the above in mind, Hankook Group respectfully submits that some of the subsidy schemes which it benefited from during the period of investigation cannot be taken into consideration in calculating its total countervailable subsidy amount, as (i) they do not concern the product under review imported to the UK and/or (ii) they are not specific.

2.2 Grants

2.2.1 SHT

2.2.1.1 *The subsidies granted to SHT should not be taken into consideration in the calculation of the subsidy amount as they do not concern the imports of the product under review into the UK*

Hankook Group respectfully submits that the grants reported in Section D2 of SHT's questionnaire response - in particular, in Annex II 'Table D2-Grant' - should not be taken into account for the purpose of calculating the total subsidy amount of Hankook Group since the subsidies conferred to SHT do not benefit "*the goods imported into the United Kingdom*" within the meaning of Regulation 19 cited above.

As a matter of fact, SHT is a company related to CHKT and JHKT (i.e., the Chinese exporting producers of the goods subject to review) **[CONFIDENTIAL – Intra-group activities]**.¹

Under Regulation 21(2), it is incumbent on the TRA to determine whether the exporting producers, in this case CHKT and JHKT, have directly or indirectly benefited from the financial contribution granted to SHT as part of the **[CONFIDENTIAL – Grant name]**, from which SHT benefited.

This reading is also in line with the [Agreement on subsidies and countervailing measures \(WTO SCM Agreement\)](#). In *Brazil – Aircraft (Article 21.5 – Canada II)*, the Panel clarified that "*it is incumbent upon [the investigating authority] to establish that the benefit derived from [a subsidy made to a company other than the exporting producer itself] is not retained exclusively by the [the recipient] but rather is passed through in some way to [the exporting producer]*"².

¹ **[CONFIDENTIAL – Intra-group activities]**
² Panel Report, [Brazil – Aircraft \(Article 21.5 – Canada II\)](#), fn 41

As it has been clarified during the verification, **[CONFIDENTIAL – Intra-group activities]**.

In view of the above, it is clear that the subsidies received by SHT cannot be attributed to the product under review exported to the UK, but only to the like goods sold in the Chinese domestic market.

It follows that the grants from which SHT benefited – irrespective of whether they can be considered specific within the meaning of Regulation 22 - should be excluded from the calculation of the subsidy amount in the framework of this Investigation.

2.2.1.2 *The grants accorded by the regional authority, **[CONFIDENTIAL – Regional authority]**, is not specific in the sense of Regulation 22(2)(a)(iv) read together with Article 2.1 of the WTO SCM Agreement*

Hankook Group respectfully submits that, in any case, the grants accorded to SHT do not meet the criteria of specificity under Regulation 22(2)(a)(iv) read in conjunction with Article 2.1 of WTO SCM Agreement and therefore they cannot be countervailed.

According to Regulation 22(2)(a)(iv), a subsidy is specific if it is “*limited to a specific geographical region within the jurisdiction of the granting authority*”. The term “*granting authority*” has not been defined in the Regulations. However, since Regulation 22(2)(a)(iv) echoes Article 2.1 of the WTO SCM Agreement, the interpretation of this Article by the Appellate body and the Panels could provide guidance in determining the meaning of “*granting authority*” in the context of Regulation 22(2)(a)(iv).

Article 2.1 of the WTO SCM Agreement links the specificity assessment to “*an enterprise or industry or group of enterprises or industries (referred to in this Agreement as “certain enterprises”) within the jurisdiction of the granting authority*” (emphasis added).

In *US – Countervailing Measures (China)*, the Appellate Body indeed confirmed that the identification of the jurisdiction of the granting authority is a “*preliminary step providing a framework to conduct the specificity analysis*”³.

The Appellate Body also stated that an “*essential part*” of the specificity analysis is a proper determination of “*whether the relevant jurisdiction is that of the central government or whether it is that of a regional or local government, and whether the granting authority therefore operates at a central, regional, or local level*”⁴. In this context the Appellate Body specified that “*if the granting authority was a regional government, a subsidy available to enterprises throughout the territory over which that regional government had jurisdiction would not be specific. Conversely, if the granting authority was the central government, a subsidy available to the very same enterprises would be specific*”⁵.

Bearing the above in mind, the mere fact that the granting authority is a regional authority is not sufficient to conclude that a certain financial contribution is specific. Therefore, when an investigating authority is faced with a subsidy granted by such an authority (**[CONFIDENTIAL – Regional authority]**), it should determine whether the subsidy is limited to certain enterprises or industries throughout the territory over which that regional government had jurisdiction.

³ Appellate Body Report, [US – Countervailing Measures \(China\)](#), para. 4.169.

⁴ Appellate Body Report, [US – Countervailing Measures \(China\)](#), para. 4.166.

⁵ Appellate Body Report, [US – Countervailing Measures \(China\)](#), paras. 4.165-4.166.

This is clearly not the case. Hankook Group wishes to emphasise that the grant provided to SHT by **[CONFIDENTIAL – regional authority]**, i.e., “**[CONFIDENTIAL – grant name]**,” is available to all the enterprises within the jurisdiction **[CONFIDENTIAL – regional authority]**. As explained during the verification visit, every company in the district is eligible to apply for this grant and the subsidy amount is calculated based on the taxation amount.

Since the grant under discussion is not limited to certain enterprises or industries within the territory of the granting authority, this programme cannot be considered as specific within the meaning of Regulation 22(2)(a).

2.2.2 CHKT

2.2.2.1 **[CONFIDENTIAL – commercially sensitive information: grant name]**

This scheme is intended to encourage the companies established in Chongqing province to reduce the emissions of gas pollutants.⁶ Under this programme, CHKT submitted an application for the purpose of securing funding for the retrofitting of its boiler to incorporate low nitrogen combustion technology.

Participation to the Low-Nitrogen Combustion Conversion Project administered by the Chongqing Municipal Bureau of Ecology open to all enterprises established in the territory of the granting authority (i.e., Chongqing) that meet certain objectively defined emission standards. In particular, only companies with **[CONFIDENTIAL – commercially sensitive information: eligibility condition]** can benefit from this scheme, without any distinction based on the identity of the company or the relevant economic sector⁷.

In this sense, Hankook submits that this scheme should not be considered as specific within the meaning of Regulation 22(2) and (4) of the EU Exit Regulations.

2.2.2.2 **[CONFIDENTIAL – commercially sensitive information: grant name]**

[CONFIDENTIAL – commercially sensitive information: grant name] was implemented by Chongqing Municipal Commission of Economy and Informatization⁸ in order to accelerate the construction of the City’s industrial green manufacturing system”. One of the main mandates of the *Industrial Green Development Plan (2016-2020)*⁹ is to “accelerate the construction of a green manufacturing system and develop and strengthen the green manufacturing industry”.¹⁰

⁶ Exhibit D2.3 of CHKT’s questionnaire response, p.5.

⁷ Exhibit D2.3 of CHKT’s questionnaire response.

⁸ Exhibit D2.4 of CHKT’s questionnaire response.

⁹ **Exhibit 1** (CHKT Grant No. .3 Industrial Green Development Plan (2016-2020)).

¹⁰ **Exhibit 1** (CHKT Grant No. 3 Industrial Green Development Plan (2016-2020)), p. 13.

The grant is conditional upon the obtention of a “National Green Factory Certification”. This certification is granted on the basis of several pre-determined criteria, the respect of which is certified by a third-party auditor. The list of the criteria to be taken into account by the granting authority are provided on page 2 of CHKT’s third-party evaluation report **[CONFIDENTIAL – commercially sensitive information: independent third party]**¹¹ The third-party evaluation mechanism was established in accordance with the objectives of the Industrial Green Development Plan (2016-2020),¹² and contributes (*inter alia*) to strengthening the transparency and objectivity of the evaluation of the relevant criteria.

Given that all companies established in China can obtain the National Green Factory certification, that the relevant criteria for obtaining this certification are objectively defined, and that the assessment of the companies is transparently carried out by a third-party evaluation body, Hankook Group respectfully claims that this programme should not be considered as specific within the meaning of Regulation 22(4).

2.2.2.3 **[CONFIDENTIAL – commercially sensitive information: grant name]**

In accordance with the “Opinions of the State Council on the good implementation of the employment and entrepreneurship in the current and future periods [2017] No. 28”,¹³ the Chongqing City Government provides grants to the companies hiring young employees within 2 years from their graduation, unemployed residents registered as “4050 (women aged over 40, and men aged over 50)”, low-income household members and individuals from zero-employment families.¹⁴ As a result, CHKT has received a subsidy equivalent to the actual amount of social insurance that it paid for the employees in the target group.

Since this scheme is general in nature (being available to all undertakings that hire certain categories of workers across China), it cannot be considered as countervailable within the meaning of Regulation 22(2) and (4) of the EU Exit Regulations.

2.3 Loans – Bill discounting (JHKT)

With reference to the bill discounts granted to JHKT by the **[CONFIDENTIAL – commercially sensitive information: Bank]**, it is submitted that this scheme should be considered as not countervailable, being not specific within the meaning of Regulation 22(2) of the EU Exit Regulations. Indeed, during the investigation period, **[CONFIDENTIAL – commercially sensitive information: Bank]** applied to JHKT the same discount rate applied to all companies in China.

As a matter of fact, the table provided as Exhibit D3.1.3 of JHKT’s questionnaire response is an internal table prepared by **[CONFIDENTIAL – commercially sensitive information: Bank]** and shared upon request to the companies applying for bill discounts. The rate applied to JHKT corresponds to the percentage applicable for the relevant months. It should be specified that **[CONFIDENTIAL – commercially sensitive information: Bank]** applied the same discounting rate to all companies in China, including JHKT. In this regard, Hankook Group refers to the relevant declaration, hereby submitted – with an English courtesy translation.¹⁵

¹¹ **Exhibit 2** (CHKT Grant No. 3 Third-party evaluation report), p.2 - **[CONFIDENTIAL – commercially sensitive information]**
¹² **Exhibit 1** (CHKT Grant No. 3 Industrial Green Development Plan (2016-2020)), p. 18.
¹³ **Exhibit 3** (CHKT Grant No. 5).
¹⁴ Exhibit D2.5 of CHKT’s questionnaire response and **Exhibit 3** (CHKT Grant No. 5).
¹⁵ **Exhibit 4** (**[CONFIDENTIAL – commercially sensitive information: correspondence with the Bank]**).

It follows that during the investigation period JHKT did not benefit from any preferential discount rate within the meaning of Regulation 22(2) of the EU Exit Regulations.

3. TAX REDUCTIONS

3.1 JHKT

During the investigation period, JHKT received the following tax reductions and refunds: **[CONFIDENTIAL – commercially sensitive information: tax reduction schemes]**. However, these **[CONFIDENTIAL – commercially sensitive information: number]** types of preferential tax schemes are general in nature and not limited to certain companies or industries. As such, they are not specific within the meaning of Regulation 22(2) of the EU Exit Regulations.

First, regarding the **[CONFIDENTIAL – commercially sensitive information: tax reduction scheme]**, Exhibit D11.1A of JHKT's questionnaire response clearly explains that **[CONFIDENTIAL – commercially sensitive information: objective eligibility condition]** is eligible to several tax advantages **[CONFIDENTIAL – commercially sensitive information: functioning of the tax reduction scheme]**¹⁶ This tax scheme is available to all companies in all sectors, provided that they meet the relevant eligibility criteria, which are objectively defined. It follows that the scheme is manifestly not specific, and therefore it should be disregarded for the purposes of Hankook Group's subsidy calculation.

Second, regarding the **[CONFIDENTIAL – commercially sensitive information: tax reduction scheme]**, it should be noted that this scheme is available to all Chinese companies which **[CONFIDENTIAL – commercially sensitive information: functioning of the tax reduction scheme]** All companies benefit from this program which is, by its nature, available to all Chinese companies. Moreover, regional authorities cannot extend and/or modify the clearly defined eligibility criteria for the programme. Therefore, the benefit conferred by the tax program in question cannot be considered as countervailable, and thus should not be included in the calculation of Hankook Group's subsidy amount.

Third, regarding the **[CONFIDENTIAL – commercially sensitive information: tax reduction scheme]**, **[CONFIDENTIAL – commercially sensitive information: functioning of the tax reduction scheme]** Given the general nature of this scheme, which is manifestly not specific, it should be disregarded for the purposes of the subsidy calculation.

3.2 CHKT

During the investigation period, also CHKT benefited from **([CONFIDENTIAL – commercially sensitive information: tax reduction schemes])** under the same conditions that applied to JHKT. Therefore, for the same reasons explained above, Hankook Group respectfully submits that the amounts received under these schemes are not countervailable and should be excluded from CHKT's subsidy calculation.

¹⁶ Exhibit 5 **[CONFIDENTIAL – commercially sensitive information: tax reduction scheme]**

4. CALCULATION OF THE BENEFIT FROM LAND-USE RIGHTS

Hankook Group would like to submit the following comments in relation to the subsidy amount (allegedly) received by JHKT and CHKT in connection with the land use rights.

Both CHKT and JHKT obtained land use rights for **[CONFIDENTIAL – non-confidential range: 45-55]** years from the relevant local authority (**[CONFIDENTIAL – commercially sensitive information: regional authority]**). In both cases, these rights had been granted following a competitive bidding process. It is therefore submitted that no countervailable benefit was received by CHKT and JHKT in relation to land use rights.

The above clarified, it should be noted that in order to tentatively determine the (alleged) benefit received by CHKT and JHKT in connection with the land use rights, in Section D6 of CHKT's and JHKT's questionnaire responses (as well as Table D6 of Annex I), Hankook Group compared the actual amount paid by the companies to a benchmark price for land use in a suitable third country, which was identified as being Thailand. This was done for the sake of full cooperation, to reflect the Commission's and the TRA's precedent decisions in respect of this scheme.

However, Hankook Group wishes to recall that according to Article 14(d) of the [WTO SCM Agreement](#), *"the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase"* (emphases added).

Therefore, in the case of CHKT and JHKT, the adequacy of the actual remuneration paid for the land-use rights should not be assessed by reference to an external benchmark (such as the market price of land in Thailand), but rather with a national benchmark, i.e. a reasonable and representative price in China.

In this regard, it should be recalled that in China any parcel of land is assigned by the authorities on the basis of a bidding procedure open to interested parties. Both JHKT and CHKT obtained their parcels of land following the standard procedure, which is applied across the entire county, by taking part to a competitive bidding process open to the participation of other bidders. As a consequence, JHKT and CHKT did not benefit of any preferential treatment in this regard. Therefore, there is no ground to conclude that they received any countervailable benefit within the meaning of the SCM Agreement.

Regarding CHKT, **[CONFIDENTIAL – commercially sensitive information: reduction applied by the regional authority]**¹⁷

¹⁷ **Exhibit 6** (CHKT – Calculation of Land Use Right Benefit). **[CONFIDENTIAL – contains commercially sensitive information which is not publicly available]**

Based on the foregoing, Hankook Group respectfully submits that the subsidy amount associated with the and use rights for both JHKT and CJKT during the investigation period should not be calculated based on an external benchmark (e.g., price in **[CONFIDENTIAL – commercially sensitive information: country]**), in line with the relevant WTO rules. The only benefit that should be taken into account for the purpose of Hankook Group’s subsidy margin calculation during the investigation period is 1/[CONFIDENTIAL – non-confidential range: 45-55] of the discount received by CHKT on the price that it should have paid for being awarded the land use rights.

5. CALCULATION OF THE BENEFIT RELATED TO THE PROVISION OF ELECTRICITY

Hankook Group acknowledges that the electricity bought by JHKT and CHKT from **[CONFIDENTIAL – commercially sensitive information: grid companies]**, should be considered as a provision of goods or services by a government in the sense of Article 14(d) of the WTO SCM Agreement. Pursuant to WTO law, a benefit is conferred in similar cases only if the electricity is provided for less than adequate remuneration.

Bearing the above in mind, similarly to what was done in respect of land use rights, while completing the questionnaire responses Hankook Group tentatively calculated the (alleged) benefit associated with the provision of electricity by comparing the actual amount per Kw/h paid by the companies to a benchmark price in a suitable third country, which was initially identified as being the US. This was done to take into account the Commission’s and the TRA’s previous decisions in respect of this scheme.

Nonetheless, pursuant to Article 14(d) of the WTO SCM Agreement, the adequacy of the remuneration paid to the Chinese government for the provision of electricity should be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase, i.e., in China, and not to an external benchmark (such as the prices in the US).

Bearing the above in mind, Hankook Group respectfully submits that the (alleged) benefit conferred to JHKT and CHKT (if any) should be determined on the basis of a benchmark in China. To this end, the following calculation was carried out:

- for JHKT, the actual price per unit (Kw/h) paid by the company under the contract concluded with **[CONFIDENTIAL – commercially sensitive information: grid company] (grid operator)**¹⁸ was compared to the official electricity prices for the electricity users in Jiangsu that do not have an individual contract with the grid operator (**grid users**).¹⁹ The comparison demonstrates that the price per unit (Kw/h) paid by JHKT is even higher than the price applied to the grid users in the region during the investigation period. The comparison is done taking into account the different prices applied for peak, normal, and midnight hours. As a result, it should be concluded that JHKT did not benefit of any subsidy.

¹⁸ **Exhibit 7A [CONFIDENTIAL – commercially sensitive information which is not publicly available]**
¹⁹ **Exhibit 7B (JHKT Official Electricity Tariff).**

- for CHKT, the same methodology was applied, i.e. the actual price per kw/h paid by CHKT was compared with the official price applied to grid users by the grid operator **[CONFIDENTIAL – commercially sensitive information: grid companies]**.²⁰ The benefit thus calculated amounts to **[CONFIDENTIAL – commercially sensitive information which is not publicly available]**.²¹

The above methodology, which is fully WTO-compliant, should be preferred over the methodology used in the past by the Commission and by the TRA, which entails the comparison with an external benchmark.

As a subordinate ground, should the TRA decide to resort to such an external benchmark, *quod non*, Hankook Group submits that the electricity prices in Thailand should be considered as an appropriate benchmark for this purpose.

In this regards, Hankook Group refers to its submission of 9 October 2023 titled “*Comments of Hankook on the TRA’s provisional choice of Brazil as most “appropriate representative third country” in the event of a finding of a particular market situation (PMS)*”. As extensively explained in that submission, Thailand should be selected as a representative country in light of its level of economic development, as well as the existence of a domestic industry involved in the production of the like goods which has features similar to China in several key respects, such as number of producers, production capacity and exports of the like goods to the UK.

In light of the foregoing, calculating the benefit associated with the purchase of electricity based on the electricity prices in Thailand would be methodologically more correct than calculating the benefit based on the prices in the US, which were initially used by Hankook Group due to the unavailability of reliable information concerning Thailand. However, now that such information has been identified, there would be no reason to use the US prices as a benchmark.

The calculation contained in CHKT’s and JHKT’s questionnaire responses was therefore modified by replacing the US prices with the prices obtained from the Provincial Electricity Authority of Thailand.²² On this basis, it can be concluded that no benefit was conferred to JHKT nor to CHKT during the investigation period.²³

6. CONCLUSION

In light of the above considerations, it should be concluded that;

- (i) the measures listed in Sections 2 and 3 above do not amount to countervailable subsidies within the meaning of Regulation 22 of the EU Exit Regulations,
- (ii) the benefit conferred by the land-use rights and the provision of electricity should be calculated in compliance with Article 14(d) of the WTO SCM Agreement, by reference to the prevailing market conditions for the good or service in question in China, and not by using an external benchmark. Nevertheless, should the TRA consider that the prevailing market conditions in China cannot be used as a benchmark, *quod non*,

²⁰ **Exhibit 7C** (CHKT - Official Electricity Tariff).

²¹ **Exhibit 7A [CONFIDENTIAL – commercially sensitive information which is not publicly available]**

²² **Exhibit 7D** (Electricity Tariffs of Provincial Electricity Authority of Thailand).

²³ **Exhibit 7E [CONFIDENTIAL – commercially sensitive information which is not publicly available]**

Hankook Group respectfully submits that Thailand should be selected as a representative third country for that purpose, consistently with the position expressed in its submission dated 9 October 2023.

Hankook Group remains available to provide any additional information the TRA may need in relation to the subsidy schemes described in this submission.

Yours sincerely,

Gabriele Coppo