
**COMMENTS ON STATEMENT OF ESSENTIAL FACTS IN THE UK TRANSITION
REVIEW OF ANTI-DUMPING MEASURES APPLYING TO CERTAIN CERAMIC TILES
ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA**

(TD0027)

**ON BEHALF OF
CHINA CHAMBER OF COMMERCE OF METALS, MINERALS & CHEMICALS
IMPORTERS & EXPORTERS (CCCMC)**

AND

GUANGDONG OVERLAND CERAMICS CO., LTD. (OVERLAND)

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- [1] On 22 September 2022, a Notice of Initiation of a transition review of the anti-dumping duties on certain ceramic tiles originating in the People’s Republic of China was published by the UK Trade Remedies Authority (“TRA” or “the Authority”).
- [2] On 19 February 2024, the TRA released the Statement on Essential Facts (SEF) for the Transition Review on Anti-dumping Measures for Ceramic Tiles Originating from China (TD0027).
- [3] This submission is made on behalf of the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (“**CCCMC**”) and its members, including Guangdong Overland Ceramics Co., Ltd. (“**Overland**”). Both CCCMC and Overland fully cooperated in the current transition review, including submissions of questionnaire responses, and participation in the meeting organized by TRA in July 2023.
- [4] CCCMC’s position is supported and endorsed by its members. For easy reference, the following comments may refer to CCCMC only. Nevertheless, it should be noted that the arguments are raised on behalf of CCCMC’s China-wide exporter members, including Overland.
- [5] CCCMC appreciates the efforts made by the TRA during this proceeding in hearing from interested parties and in conducting necessary reviews. However, for the released SEF, CCCMC reiterates the position in this proceeding that it strongly opposes the continuation of the anti-dumping measures. In addition, there are a few issues that CCCMC would like to seek the Authority’s attention for clarification and reconsideration.

I. CCCMC REITERATES ITS POSITION ON THE LEGALITY OF UK ADOPTING THE EU MEASURES

- [6] CCCMC reiterates its position in the initial comments that UK’s continuation of EU measures after Brexit remains doubtful in terms of its legality under the WTO Anti-dumping Agreement (ADA).

1. Article 1 of WTO ADA

- [7] It is CCCMC’s view that the UK’s continuation of EU measures is against Article 1 of the WTO ADA, which requires that measures must be taken pursuant to **investigation** initiated and conducted in accordance with the provisions of WTO ADA.

*“An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to **investigations** initiated and conducted in accordance with the provisions of this Agreement.”*

[8] In the case at hand, it is clear that the UK has not applied measures on the basis of a domestic investigation. Instead, the currently applicable measures in the UK are applied on the basis of an (old) investigation (including but not limited to the duty rates applicable to a list of Chinese exporters) conducted by the European Commission, which was based on the EU basic Anti-dumping Regulation.

2. Article 3.1 of WTO ADA

[9] CCCMC also views that the UK's continuation of the EU measures is against Article 3.1 of the WTO ADA, which requires that:

*“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.”*¹

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

[11] The Authority admits in the SEF that the UK industry does not produce certain types of ceramic tiles (and accordingly makes revision to the product scope that originally proposed by the EU industry). If significant differences exist in two jurisdictions in terms of the product types produced, how could the application of the measures (including the duty rate and the list of exporters) adopted in one jurisdiction, which was based on the finding of *another jurisdiction*, could possibly meet the requirement of “*pursuant to investigation, positive evidence and objective assessment*” as required by Article 3.1 of the ADA?

[12] Following the Brexit, the UK has decided to continue the application of certain EU trade remedy measures in its domestic legal order by way of national laws.² CCCMC however questions the

¹ Article 3.1 of the WTO ADA. See also Article 5 of the WTO ADA specifying the conditions which must be met by such investigation. CCCMC maintains that, since the UK authorities have never conducted a separate and independent investigation, these conditions have not been met. In other words, the current transition review is based on an underlying EU market investigation, not one that was limited to the UK market specifically.

² See the European Union (Withdrawal) Act 2018, European Union (Withdrawal) Act 2019, as well as the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the “Regulations”).

legality of this rollover mechanism under international law. As the UK has withdrawn from the EU legal order, there cannot be a situation of legal continuation. In other words, the UK cannot be regarded as a legal successor to the EU under international agreements, thereby acquiring its rights and obligations or legal status under any international agreement.

3. Article 11.2 of the WTO ADA

[13] As set out in Article 11.2 of the WTO ADA:

*“The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review [...]”*³

[14] The UK transition review cannot be considered as a permissible review under Article 11.2 of the WTO ADA. This is because the reviewing authority (UK TRA) is different from the investigation authority which has assessed the need for the imposition of the original measures (the European Commission). Moreover, the UK transition reviews are not covered by Article 11.3 of the WTO ADA, which is concerning the concept of “expiry review”. As a matter of fact, UK transition reviews cannot be supported by any provision in the WTO ADA. Therefore, CCCMC maintains that such reviews are invalid under the WTO ADA and should be terminated immediately.

[15] On the grounds that the UK’s continuation of EU measures appears to violate Article 1, 3.1, 11.2 of the WTO ADA, CCCMC reiterates its position at the earlier stage of this proceeding that the current measure lacks legality and should be otherwise applied based on the Authority’s own partial and objective investigation on the assessments of the UK (instead of EU) industry.

[16] CCCMC calls for the Authority’s acceptance of the above submission on legality issues and in accordance with WTO ADA. CCCMC suggests that the authority should repeal this measure as soon as possible with retrospective effects. Correspondingly, the import duty already levied on the products concerned should be refunded. If the authority may still have doubts that Chinese imports might cause injury or threaten to cause injury to the UK industry, then a new investigation could be initiated by the authority within the frame of WTO ADA. A determination on injury, dumping, causal link and other aspects for applying measures may then be made on the basis of UK industry performance data, rather than the EU-wide performance data.

³ See Article 11.2 of the WTO ADA.

II. CCCMC REITERATES ITS POSITION ON THE ISSUE OF INJURY AND THREAT OF INJURY

1. CCCMC reiterates that there is no injury to the UK industry.

[17] It should be kept in mind that the initial investigation was conducted by the European Commission in view of the Union industry and the EU-28 market, not the UK one. Accordingly, the EU determination cannot automatically be applied to the UK market. Any conclusion of the initial investigation applied only to the Union industry and EU market.

[18] The UK authority failed to establish a determination of injury based on positive evidence, as required by Article 3.1 of the WTO ADA. There is no UK-wide industry data available in the case at hand at all for the authority to make assessment or determination.

[19] CCCMC also noticed that the SEF did not make any finding that Chinese imports caused injury to the UK domestic industry during the period of investigation.

2. CCCMC reiterates that there is no threat of injury to the UK industry.

[20] CCCMC reiterates its position in the initial comments that China's far-reaching environmental and energy saving regulations, which decreased Chinese production of the goods subject to the transition review, thereby materially limiting the exporting capacity of Chinese products, including the capacity to export to the UK. The policies cover limitation of carbon emission and change in fuel from coal to gas. Companies failing to abide by the relevant regulations will face compulsory shutdown in production.

[21] CCCMC notices that the SEF has mentioned, while the world production and trade of ceramic tiles have been on the rise from 2018 to 2022 (*see* Table 17-18 of the SEF), the PRC-wide production and exporting quantity went downward (*see* Table 14 of the SEF). This fact collaborated with CCCMC's position.

[22] CCCMC opposes that a positive finding on the recurrence of injury and dumping be arbitrarily made only on the grounds that China has large production capacity and a higher proportion in the world production of ceramic tiles. Article 3.7 of the WTO ADA requires that a finding should be made based facts, instead of mere allegation, conjecture or remote possibility.

III. CCCMC REITERATES ITS POSITION IN TERMS OF UK ECONOMIC INTEREST

- [23] CCCMC reiterates its position that improper measures on Chinese imports may harm the interest of UK importers, distributors, sub-contractors and end users. And such interested parties take up a significantly higher proportion in the UK's overall economic interest than UK's domestic industry of ceramic tiles.
- [24] In addition, improper measures could not actually protect the UK domestic industry, but more likely would benefit enterprises from third countries. According to the SEF (*see* Table 13), import prices from most of the third countries were actually lower than the price imported from China.
- [25] Moreover, long-term application of improper and over-protective trade measures could not in effect protect the domestic industry but would cause it losing ability to compete in the long run.
- [26] Considering the existing economy situation, the UK cannot afford to suffer more from inflations. Termination of the measure may help to overcome this situation because foreign commodities have more stable cost of production, and thus a more stable price for exports.

IV. CCCMC CLAIMS FOR REFUND OF DUTY AMOUNT ALREADY LEVIED FOR PRODUCTS ALREADY EXCLUDED

- [27] Since the authority has provided a recommended product scope in the SEF, which allowed partial product exclusion in terms of size of surface area. This product exclusion should mean the termination of measures on these large size products be retrospective. Therefore, import tax that has been levied should be refunded to the relevant importers for the excluded products.

V. CCCMC'S COMMENTS FOLLOWING TRA'S DETERMINATION IN SEF CONCERNING PRODUCTS SCOPE

1. Product scope revision

(1) To exclude products equal to the size of 0.36m²

- [28] CCCMC submits that the scope of products exclusion should be revised from the current "exceeding 0.36m²" to "exceeding and equals to 0.36m²", i.e., adding one more exclusion standard for products whose surface area equal to 0.36m².
- [29] This submission is made on ground that the UK industry does not produce ceramic tiles in the

size equal to 0.36m^2 .

[30] Ceramic tiles of $600*600\text{mm}$ are the main specification for ceramic tiles whose surface are equal to 0.36m^2 . To CCCMC's best knowledge, the largest ceramic tile that the UK industry can produce is $300*600\text{mm}$. Because $600*600\text{mm}$ ceramic tiles are the normal and commonly used products in the UK market. If the UK industry does not produce such specification and this specification is included in the product scope for higher taxation, the UK-wide purchasing ability and alternative choices for imported products of such specification may be hindered due to the high import tax and therefore harm the interests of downstream industry and end users in the UK. Meanwhile, the UK industry could not benefit from such measures, because such large size tiles could only be sourced from other third countries.

[31] To this end, CCCMC suggests that revisions be made to the product scope. The currently recommended product scope reads as:

“Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics, except single tiles, the largest surface area of which exceeds 0.36m^2 , and the differential relief of the largest surface of which does not exceed 3mm.”

[32] CCCMC suggests the following revised product scope:

“Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics, except single tiles, the largest surface area of which equals to or exceeds 0.36m^2 , and the differential relief of the largest surface of which does not exceed 3mm.”

(2) to exclude products with one side exceeding 600mm

[33] In addition, CCCMC has mentioned the request for exclusion of products with at least one side exceeding 600mm. CCCMC takes this opportunity to reiterate this position. As noticed in the SEF disclosure, CCCMC's position on this issue is in line with the BS5385-3:2014 rules and paragraph 114 of the SEF.

[34] As noted at paragraph 114 of the SEF, BS5385-3:2014, a UK domestically applicable construction standards separates ceramic tiles into three categories, respectively being “ceramic tile”, “large ceramic format tile” and “ceramic panel”. The definition for the category “ceramic

tile” reads as follows:

“Ceramic tile denotes product with a surface area of less than or equal to 3600cm² (0.36m²), with no tile edge greater than 600mm in length.”

[35] To this end, by the definition of “ceramic tile”, CCCMC respectfully requests the authority to exclude products with at least one edge greater than 600mm (even if they have surface areas less than 0.36m²) from the product scope.

(3) To exclude products with low water absorption (porcelain tiles)

[36] CCCMC reiterates its position that according to the documents submitted by the UK industry itself, the UK industry **cannot produce tiles with low water absorbency**, especially porcelain tiles with a water absorbent rate not exceeding 0.5%. As a matter of fact, and stated in paragraph 184 of SEF, domestic producers of the UK mainly focus on production of ceramic tile subject to HS code 6907230000, which has a water absorption rate higher than 10%.

[37] A clear demarcation line can be drawn between tiles of low water absorbency and those produced by the UK industry of high-water absorbency because they differ in terms of corrosion resistance, heat resistance and application.

	Low Water Absorbent Tiles (Porcelain Tiles) Produced by Chinese Exporters	High Water Absorbent Tiles Produced by the UK Industry
Water Absorbency	≤0.5%	>0.5% but ≤10% or > 10%
Density	High	Low
Specification	High abrasion, impact and thermal resistance parameters	Low abrasion, impact and thermal resistance parameters
Thickness	Thick	Usually thin
Hardness	Hard	Soft
Application Scenario	Applicable in cold weathers ; Unsuitable for ceilings and walls.	Applicable for ceilings and walls; Unsuitable for cold weathers.

[38] The application scenarios for low water absorbent tiles (*i.e.*, porcelain tiles whose water absorbent rate not exceeding 0.5%) are apparently distinguishable because its high density means higher weights and higher thickness than high water absorbent tiles when volumes are equal,

which make such tiles pose more risks to user's safety. Therefore, porcelain tiles do not have the unidirectional interchangeability as claimed by the UK industry (*see* paragraph 184 of the SEF). CCCMC submits that porcelain tiles and high-water absorbent tiles are not interchangeable substitutes. Excluding all import products listed under Tariff Code 6907 21 will not adversely impact the UK industry, on the contrary, it is in the interest of UK users.

2. Summary of product scope revision

[39] Regulation 99A(2)(a)(ii) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulation 2019, as amended (the Regulation), requires the TRA to consider, within the conduct of a transition review, whether the goods or the description of the goods to which an anti-dumping amount is applicable should be varied.

[40] CCCMC believes that, based on the arguments presented below, those three categories of products should be excluded from the scope of the product under the investigation.

VI. REQUESTS

[41] For the above grounds, CCCMC respectfully requests the authority to terminate the current review and repeal the existing measure, while provide refunds of the anti-dumping duty amount already collected (deposits). In case the authority decides to continue the current investigation, then the conclusion on threat of injury should be re-assessed. In any event, if the authority decides to continue the current measure, it is requested that a thorough consideration on product exclusion submission above be taken.

[42] Should you have any questions, please do not hesitate to contact CCCMC or its legal counsel team. CCCMC reiterate its intention of full cooperation with the UK TRA.