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Non-Confidential

**The Comments on the Particular Market Situation in China's Bus and Lorry
Tyres Market regarding the Transition Review TD0035
Submission of the GOC**

The Particular Market Situation Questionnaire by Trade Remedies Authority (TRA) requested the government of the People's Republic of China (GOC) to provide information on the allegations that whether a particular market situation (PMS) exists in the bus and lorry tyres market in China. It is appreciated that TRA gave this opportunity. In order to promote the fair and just settlement of the transition review concerning certain bus and lorry tyres originating in China (transition review TD0035), the GOC would like to submit the following comments.

1. The validity of transition reviews and the maintenance or application of EU trade remedy measures (the EU measures) after Brexit.

1.1 The maintenance or application of the EU trade remedy measures by the UK lacks legal basis.

The maintenance or application of the EU measures by the UK lacks legal basis. The EU's Notice clearly states that "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". There is no international law or WTO rules authorizing the UK to maintain or apply the EU measures.

Indeed, following the UK's exit from the EU, the UK adopted a sovereign decision to maintain these trade remedy measures in force in the UK. The lawfulness of the continuing application in the UK of the anti-dumping measures subject to TD0035 post-UK exit from the EU under WTO rules and, in particular, Articles I, II, III, XXIII and XXIV GATT 1994 is highly questionable as the UK infringed the WTO's Most-Favored Nation and Non-Discrimination principles thereby nullifying and impairing PRC's UK market access rights for the product concerned.

1.2 Transition reviews initiated by the UK lacks factual basis and is inconsistent with WTO rules.

The Review prescribed in the Anti-Dumping Agreement (ADA) is a solution to issues regarding pre-existing trade remedies, which is based on the logic and validity of the pre-existing trade remedies being applicable. However, as the UK no longer being a member of EU's Customs Union after Brexit, the UK and EU has become two separate and independent markets, which makes the foundation of applying original EU trade remedies void.

In the case at issue, the European Commission investigation related to imports of the product concerned into the EU and injury caused by the product concerned to the EU industry producing the like product. The European Commission has never conducted a regional AD investigation limited only to the UK customs territory and the UK like product industry. All aspects should be reevaluated, from the alleged impact to the UK's domestic market to its causation with the alleged dumping behaviour. Therefore, the transition reviews that determines the retention, adjustment or elimination of previous EU measures should be a new trade remedy investigation, and not a review¹.

2. Investigations on PMS should be in accordance with the WTO rules.

Without prejudice to the above, the GOC notes the investigations on PMS should be in accordance with the WTO rules.

2.1 Extensive interpretation of PMS does not comply with ADA.

In accordance with the Anti-Dumping Agreement (ADA), the scope of PMS investigation should be directed to its purpose, which PMS should have a direct impact on the domestic sales price of the relevant products, thus affecting the comparability of domestic sales prices with export prices. It is to say, in order to prove dumping, a precondition is to prove PMS and the alleged dumping behaviour has a direct causation with the damage to domestic market. However, as published by the Ministry of Commerce of the People's Republic of China, The UK is the sixth largest economy in the world, with services industries accounting for 3/4 of GDP, while manufacturing only accounting for around 1/10². It is clear from statistics that manufacturing is not of the UK's economic development's priority, therefore no direct causation can be formed without concrete evidence that it is the alleged dumping behaviour that damaged the UK's domestic manufacturing industry. Moreover, different economies are at different development stages and have their own economic characteristics. If the anti-dumping measures are extended to the evaluation

¹ Transitional Arrangements and Suggestions for Responding to UK Trade Remedies after Brexit

² <http://ozs.mofcom.gov.cn/article/c/201905/20190502866379.shtml>

of national systems and policies, and attribute competitiveness arising from the macro-political conditions and development environment to enterprises, such an extended scope of investigation would neither directly support the finding of a PMS nor be consistent with ADA.

2.2 The Inversion of burden of proof.

Although the terms of PMS and situations of PMS are stipulated in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, in Transition Review TS0035, it has not been seen that the UK domestic producers claim the existence of PMS in the China's bus and lorry tyres market and submit reliable evidence. Not only had PMS not been claimed, quite the opposite had been stated by domestic producer Continental Tyre Group Ltd. Continental Tyre Group Ltd answered in its questionnaire to the question regarding PMS that *In 2018, imports from China reduced by over 60% following introduction of tariffs. Over the following 4 years, data shows that the exporting country has shifted from China to Indonesia and Asia Pacific other with most of the import volume now coming from these countries - with the result that total Asian imports are back up to 2016 / 2017 high levels. Over 80% of retreaded truck & bus tyres used in the UK are made in the UK. Directly and indirectly the sector supports over 5,500 UK jobs many in deprived areas of the country. Retreading of truck and bus tyres contributes £230 million to the UK economy every year*³.

Another interested party, i.e., Hankook Tyre UK Ltd, also explicitly clarified that there is no possibility of existence of PMS in China with regard to bus and lorry tyres and the raw materials thereof.⁴

According to Article 5 of ADA, *Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph(the application)*⁵. If the UK domestic industry or interested parties claim that a PMS exists in the China's bus and lorry tyres market, they should provide relevant sufficient evidences, instead of TRA asking the GOC to provide contrary evidence or information to prove that there is no PMS in China's bus and lorry tyres market against their simple assertion. This is a typical inversion of the burden of proof, which is inconsistent with the relevant provisions of ADA.

3. No PMS exists in the China's bus and lorry tyres market.

Without prejudice to the above, the GOC notes the Article 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 stipulates that a “particular market situation” includes situations where—(1) prices are artificially low; (2) there is significant barter trade; (3) prices reflect non-commercial factors. The GOC has

³ Annex 1-Pre-Sampling Questionnaire (Producer)-Continental Tyre Group Ltd

⁴ Pre-Sampling Questionnaire (Importer) of Hankook Tyre UK Ltd.

⁵ Annex 2-Anti-Dumping Agreement

assessed that the above situations do not exist in the China's bus and lorry tyres market.

3.1 All types of Chinese bus and lorry tyres enterprises are equal competitors in the market.

Article 15 of the Constitution of The People's Republic of China stipulates that China shall practice a socialist market economy. After years of efforts, China has established a market economy in which the market plays a decisive role in the allocation of resources, which is recognized by most countries in the world. All kinds of bus and lorry tyres manufacturers in China are established and operate in accordance with the relevant provisions of the Company Law of the Peoples Republic of China. They allocate resources fully accordance with price signals and participate fairly in market competition. The Company Law of the Peoples Republic of China does not interfere with the production, operation and pricing of these enterprises.

After years of reform, China's state-owned enterprises (SOEs) have become independent market participants, which allocates resources, sets sales prices and conducts business fully compliance with price signals. Article 16 of the Constitution of The People's Republic of China clearly stipulates that State-owned enterprises should, within the scope prescribed by law, have the right to operate autonomously. SOEs in China are market entities that operate independently, bear their own profits and losses, exercise self-restraint and self-developments. They participate in market competition equally with enterprises of other ownership, without special treatment. The total assets of listed companies controlled by SOEs account for 67% of that of central enterprises'. Listed companies have quarterly, half-yearly and annual reports, and their information are transparent. It can be seen that SOEs are independent market entities operating in accordance with the provisions of Chinese Constitution Law and do not enjoy special treatment. Like other types of enterprises, SOEs allocate resources, set prices for domestic sales and exports and conduct their business in full accordance with price signals.

3.2 Five-year plans are not equal to government intervention.

The primary purpose of China's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plan is not self-executing and is not binding. The GOC does not interfere with business operations and pricing practices accordingly. The plan should not be considered to be government intervention. Five-year plan may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction.

The white paper "Industrial Strategy - Building a Britain fit for the future", released

by the UK government in November 2017, generally has the same intention and scope as the 14th Five-Year Plan. The GOC request TRA to determinate whether the white paper demonstrates that the UK government intervenes or controls business and would cause a PMS in the UK economy. Therefor, GOC requests TRA give equal treatment to China's five-year plans and this UK white paper rather than implement double standards.

In addition, according to settled WTO decision practice, simple assertions, unsubstantiated by relevant and positive evidence, are insufficient to meet the requirements of Article 5.2 ADA. Evidence for a positive PMS PRC tyres industry determination must be more than mere assertions and conjecture and include information and data establishing the facts with probative value and be related to the PMS determination in the PRC tyre sector. Mere references to GOC policy documents and guidelines do not meet this high requisite standard of proof.

3.3 The bus and lorry tyres market in China is fully competitive and prices are determined by the market force.

As of 2022, there are more than 2000 tyre producers in China, with the majority of which being small and medium-sized enterprises. There are very few state-owned enterprises in the bus and lorry tyres industry and its upstream raw material supply chain. There are no monopolies nor state interference in tyre industry, and the Chinese bus and lorry tyres market is a fully competitive market.

Neither tyres nor the main raw materials used in the manufacture of tyres (mostly natural rubber, synthetic rubber and carbon black) could be affected by any non-market factor. In particular, no significant distortions affecting these markets in China could be identified. In terms of the prices, it must be noted that neither the price for tyres nor the price for natural rubber, synthetic rubber nor carbon black is regulated or influenced by any government intervention. There is no indication or evidence that the price for these materials in China is not the results of market forces. On the contrary, the price actually paid by Chinese tyre producers to buy natural rubber, synthetic rubber and carbon black is in line with international benchmarks.

Thus, the domestic sales prices and export prices of Chinese bus and lorry tyres are determined by market factors. The GOC does not intervene or control the sales practices and sales prices of these products. The production and sales decisions of various types of enterprises are entirely determined by market factors. There is no evidence that the prices of Chinese tyre products are artificially low.

3.4 No barter trade in China's bus and lorry tyres market.

China's domestic bus and lorry tyres market is not engaged in barter trade. Domestic bus and lorry tyres products are traded all in the general trade. The producers decided the price of the bus and lorry tyres according to the market factors. Domestic bus and lorry tyres sales are normal sales behaviors in the trade process.

4. It is not in the UK's interest to continue to apply the bus and lorry tyres anti-dumping measures.

The price of bus and lorry tyres in UK is significantly distorted by the anti-dumping measures for bus and lorry tyres. The distorted high price will significantly increase the cost of downstream users, which will delay or retard the recovery ability and speed of downstream industries from the impact of the COVID-19. It will further cause the domestic demand for bus and lorry tyres in the UK to shrink.

5. Conclusion.

The maintenance or application of the EU measures by the UK lacks legal and factual basis. The relevant transition reviews are invalid from the beginning. The UK shall terminate the application of the EU measures and all the on-going transition reviews. The PMS investigation conducted by TRA shall comply with WTO rules. China has established a market economy in which the market force plays a decisive role in resource allocation. All kinds of enterprises are equal entities of market competition. There is no situations of PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's bus and lorry tyres market. All types of Chinese bus and lorry tyres producers operate independently according to the price signal. The GOC has not intervened in the production, operation and pricing of these enterprises. The five-year plan does not belong to the government's intervention in enterprises. China's bus and lorry tyres market is fully open and free, and the price is determined by the market forces. Continuing to apply the bus and lorry tyres anti-dumping measures is not in the UK's interest. Therefore TRA shall terminate the current investigation and revoke the relevant measures accordingly.