
**COMMENTS ON THE STATEMENTS OF ESSENTIAL FACTS IN THE UK
TRANSITION REVIEW OF ANTI-DUMPING AND COUNTERVAILING
MEASURES ON CERTAIN PNEUMATIC TYRES USED FOR BUS OR LORRIES
ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA**

TD0035 AND TS0036

ON BEHALF OF
CHINA RUBBER INDUSTRY ASSOCIATION
(CRIA)

27 September 2024

1. INTRODUCTION

- [1] On 3 May 2023, the UK Trade Remedies Authority (TRA) published notices of initiation of transition reviews of the anti-dumping¹ and countervailing² measures on certain pneumatic tyres used for bus and lorries³ (hereinafter “bus and lorry tyres” or “truck and bus radial tyres” or “TBR”) originating in the People’s Republic of China.
- [2] The UK transition review of the anti-dumping measures (TD0035) was related to the one initially adopted in the European Union (EU) back in 2018.⁴ The UK transition review of the countervailing measures (TS0036) was related to the parallel anti-subsidy measures adopted in the EU.⁵
- [3] On 27 August 2024, the TRA released the Statement of Essential Facts (‘SEF’) in both proceeding with the recommendation to maintain the measures in place and vary the level of applicable duty as follows:
- Hankook Group (Chongqing Hankook Tire Co., Ltd and Jiangsu Hankook Tire Co., Ltd) – 10,03 GBP per tyre
 - All other overseas exporters (residual rate) – 110,11 GBP per tyre.
- [4] This submission is made on behalf of the China Rubber Industry Association (‘CRIA’) and its members. CRIA is a Chinese national-level industry association and is the only national-level association that represents the interests of the entire rubber industry in China. CRIA has over 2,000 member enterprises, including rubber manufacturers, raw material suppliers, machinery manufacturers, and trading companies.
- [5] CRIA strongly contests the finding of the TRA in the anti-dumping and subsidy proceeding and maintains its position and arguments expressed throughout the present proceeding, specifically in:

¹ The full Notice of Initiation of a transition review of the anti-dumping measures (TD0035) is accessible via link: <https://www.trade-remedies.service.gov.uk/public/case/TD0035/submission/9c297680-f2e3-4eb6-acc9-3f0d24040e0f/>.

² The full Notice of Initiation of a transition review of the countervailing measures (TS0036) is accessible via link: <https://www.trade-remedies.service.gov.uk/public/case/TS0036/submission/ddd10d89-381f-481a-8cf9-8f1bd5cb3393/>.

³ The description of goods subject to review is “certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, having the following commodity codes: 40 11 20 90 00 and 40 12 12 00 10.

⁴ 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 (OJ L 263, 22.10.2018, p. 3–52).

⁵ 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 (OJ L 283, 12.11.2018, p. 1–124).

- Comments in the UK transition review of anti-dumping and countervailing measures on certain pneumatic tyres used for bus or lorries originating in the People’s Republic of China, submitted on 11 September 2023 (‘Written Comments’);
 - Anti-Dumping Questionnaire for Contributors;
 - Subsidy Questionnaire for Contributors;
 - Rebuttal on the Anonymous Submission of 29 November 2023.
- [6] By means of the present submission, CRIA intends to cover the following elements of the TRA’s analysis disclosed in the SEFs:
- Procedural issues affecting CRIA’s rights of defence;
 - Cooperation level of Chinese exporting producers, other than Hankook Group;
 - Comments on the product likeness;
 - Particular Market Situation;
 - State of the UK industry and no likelihood of injury recurrence;
 - Balanced UK economic interest test.
- [7] Based on the arguments presented below, CRIA takes the position that the TRA missed assessing crucial elements of the present review properly, such as the product scope and likeness, the level and nature of exporter’s cooperation and particular market situation in relation to China; it also failed to address a number of claims and evidence duly submitted in the course of investigation.
- [8] If based on facts but not assumptions, this transition review would lead to termination of the measures in question. In this context, CRIA concludes that extension of the measures for another period is not warranted under the standards of the WTO Anti-Dumping Agreement, Agreement on Subsidies and Countervailing Measures (“**WTO SCM**”) and the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

2. PROCEDURAL ISSUES

- [9] The CRIA submits that the legitimate procedural rights of Chinese exporting producers have been violated in several instances in both proceedings as outlined below in this section.

2.1. No meaningful remarks on CRIA’s essential claims

- [10] CRIA provided extensively claims and analysis on the below matters in the submission made on 11 September 2023. However, CRIA fails to see meaningful remarks included in the SEF to address these crucial issues.

- Non Compliance of automatic continuation of the EU measures in the UK and transition reviews as such with the WTO ADA and WTO SCM;
- The initiation of the current transition reviews omitted the annulment of the original EU measures by the EU court;⁶
- The initiation of the current transition reviews omitted the fact that renewed anti-dumping and countervailing measures were set at far lower than the original levels.⁷

[11] CRIA finds it is worthwhile to reiterate that:

- The automatic transition reviews are not in compliance with the WTO ADA and WTO SCM;
- Without any prejudice of the above comment, the transition reviews, if have been initiated, must be on the basis of the result of EU's reopening investigations, rather than annulled definitive regulations.

2.2. Right of defence

[12] Under section G/H/J of the SEFs, the TRA explains the general methodology of calculating the duty rate of “*all other companies*” that led to a recalculation of dumping margin at the level of 77.11%, subsidy margin at the level of 51.08% and injury margin at 87.32%. It follows that the TRA finds the anti-dumping duty rate at 36.24% and the countervailing duty rate at 51.08%. Afterwards, the TRA explains in the SEF TD0035 paragraphs 559-560 and in the TS SEF paragraphs 482-483 that they used the following method to convert the antidumping duty rate into fixed rates:

“ In order to reach a suitable average CIF price to calculate residual rates, we utilised publicly available HMRC trade data for the PoI and removed the total value and volume of the Hankook Group to give an estimated average CIF price for remaining imports. Then, using the margins determined earlier in this report, and taking into account the lesser duty rule...”

[13] Despite the description, no substantive disclosure on the translation from *ad valorem* duty into fixed rate duty has been provided. All Chinese exporters, except for Hankook Group, are deprived from the possibility to verify the accuracy of the duties applicable to them. CRIA respectfully requests the TRA to further disclose the calculation details.

⁶ Judgement 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 European Commission, T-30/19 and T-72/19. EU:T:2022:226.

⁷ 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, OJ L 96, 5.4.2023, p. 9–44; 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, OJ L 96, 5.4.2023, p. 45–79.

2.3. Anonymous submission

- [14] Under recital 73 of SEF TS0036 and recitals 74, 178, 183, 186 and others of SEF TD0035, the TRA extensively bases its considerations and findings on the submission of the anonymous party.
- [15] While there could be potentially a rationale to withhold the name of certain UK producers (e.g., risk of retaliation, common business projects in third countries etc), every such case shall be assessed individually on its merits and duly addressed by the TRA in its findings.
- [16] CRIA regrets to admit that the SEF document did not explain the reasons for accepting the anonymous submission. By keeping any national producer anonymous, the TRA deprives Chinese exporting producers from their full opportunity to verify their statements, sources and overall validity of the evidence taken into consideration for the purpose of final findings.

2.4. Scope of the present transition reviews

- [17] Based on TRA practice of transition review on rebar,⁸ ceramic tiles,⁹ the Chinese exporting producers could legitimately expect that the original EU anti-dumping or countervailing duties would only be maintained or revoked after the UK transition review. When deciding on the level of cooperation, including on the replies to the exporter's questionnaire, CRIA's members assumed that the anti-dumping or countervailing duties cannot increase. This is in line with the EU practice where the result of an expiry review is either to maintain or to revoke the measures in place.
- [18] Specifically, in TD0027 – Ceramic Tiles, only one Chinese exporter cooperated during the transition review. The TRA did not increase the level of duty applicable to the non-cooperating Chinese exporters, and instead revised the scope of the products subject the measures.¹⁰
- [19] However, the TRA has set up a completely new practice in this case. The present proceeding UK's transition reviews appeared to be a *de facto* new proceeding, which actually addresses CRIA's concerns under para. 23 of the Written Submission but goes beyond legitimate expectation of Chinese exporters, since the TRA failed to inform all interested parties about its intention to conduct in practice two new proceedings.
- [20] Such notification would not only ensure the procedural rights of Chinese exporting producers but change the decisions regarding the level of cooperation.
- [21] When taken together, all procedural shortcomings undermine the fairness of both proceedings.

⁸ <https://www.trade-remedies.service.gov.uk/public/case/TD0010/>.

⁹ <https://www.trade-remedies.service.gov.uk/public/case/TD0027/>.

¹⁰ See *Statement of Essential Facts* in Case TD0027 - Transition Review of anti-dumping measures applying to Ceramic Tiles originating in the People's Republic of China (PRC), available at <https://www.trade-remedies.service.gov.uk/public/case/TD0027/submission/45fa18e8-be76-42d2-8fbc-31e0c13e47b1/>

3. LEVEL OF COOPERATION AND SUBSTITUTE DATA

3.1. Wrong treatment of other Chinese enterprises as non-cooperative parties

[22] Paragraphs 13-14 of SEF clearly mention the application of **Regulation 49** from the *Trade Remedies (Dumping and Subsidisation) Regulations 2019*, which allows the TRA to treat the parties as non-cooperative due to their failure to submit responses.

[23] Regulation 49 reads as follows:

(1) Where the TRA determines that an interested party has failed to cooperate with an investigation or has otherwise significantly impeded the progress of an investigation (a “non-cooperative party”), it may disregard the information supplied by that party.

(2) For the purpose of paragraph (1), the TRA must not determine that an interested party is a non-cooperative party where it—

(a) determines that that interested party has acted to the best of their ability to cooperate with an investigation; or

(b) has accepted that compliance with any request for information to be supplied in a particular form would be unreasonably burdensome to that party.

[24] According to Regulation 49, an interested party should not be deemed non-cooperative if TRA cannot demonstrate that the party failed to act to the best of their ability to cooperate with the investigation or that fulfilling the information request would impose unreasonably burdensome.

[25] During the period of investigation, the tyres of Hankook Group accounted for 60-75% of all imports of the product under review.¹¹ Since imports from the Hankook Group accounted for most of the imports by volume, several Chinese companies, including those having very limited volume of supplies to the UK during the period of investigation, formally requested not to respond to the full anti-dumping and anti-subsidy Exporter Questionnaires.¹² Under this circumstance, TRA still announced that it intended to expand the sample to include all registered exporters, irrespective of export activity during the period of investigation.

“In order to maximise the relevant information available for the review, the TRA proposes to expand the sample to include all exporters registered to the case. Registered overseas producers of the like goods that did not export during the period of investigation are also required to submit exporter questionnaire responses.”¹³

[26] Given the disproportionate burden imposed on companies with insignificant export activity, such a requirement is manifestly unreasonable.

[27] Furthermore, the CRIA, acting as the authorised representative of the Chinese industry, confirmed its commitment to fully cooperating with the TRA on behalf of these

¹¹ TD0035 - Bus and Lorry Tyres from China - The Statement of Essential Facts.

¹² Decisions on Not responding to questionnaire in transition Review-Non Confidential.

¹³ General publication - Notice of proposed sample-07 November 2023.

enterprises.¹⁴ This message is clearly stated in CRIA's contribution questionnaire responses, as well as conveyed during previous meetings with the TRA.

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.

“Therefore, as the industry association of the Chinese exporters of the goods under review, we represent the interests of the Chinese industry in this case.”

[28] Consequently, the TRA's classification of these companies as non-cooperative contravenes the provisions of Regulation 49 and is unfounded.

3.2. Misapplication of “Best Available Information”

[29] The TRA's reliance on Regulation 38(4)(b) of the *Trade Remedies (Dumping and Subsidisation) Regulations 2019* to determine the residual amount for non-cooperative exporters by selecting the highest dumping margin during the period of investigation is also flawed.

[30] Regulation 38 reads as follows:

38.— *Determination of a residual amount*

(1) *The TRA must determine an anti-dumping amount or a countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) (a “residual amount”) for overseas exporters to which this regulation applies.*

(2) *This regulation applies to an overseas exporter where—*

(a) *the TRA has not determined an individual anti-dumping amount or countervailing amount (or in the case of a provisional remedy, estimated anti-dumping amount or estimated countervailing amount) for that overseas exporter; and*

(b) *the exporter is not a non-sampled overseas exporter within the meaning of regulation 37 (determination of the anti-dumping amount or countervailing amount for non-sampled overseas exporters).*

(3) *The TRA may determine the residual amount using any reasonable means.*

¹⁴ Transition Review Anti-Dumping Questionnaire for Contributors.

(4) When determining the residual amount pursuant to this regulation the TRA may take account of any information available including—

- (a) information contained in the application;*
- (b) information received from other interested parties during the investigation including other overseas exporters;*
- (c) published price lists;*
- (d) official import statistics or customs returns;*
- (e) relevant data pertaining to the world market or other representative markets.*

- [31] Under Article 38 (2) (b), this Article applies if and to the extent that the exporter is not a non-sampled overseas exporter. In addition, Regulation 38(4)(b) permits the TRA to use several requirements as sources of reference for interpreting the Best Information Available to determine the residual amount, but these need to be “reasonable” and not punitive.
- [32] In this case, based on the considerations under Section 3.1 above, other Chinese Parties shall not be regarded as non-cooperative. Therefore, Regulation 38 (2) (b) is not fulfilled so that Regulation 38 shall not apply.
- [33] Meanwhile, since Article 38 closely resembles Best Information Available rules of the WTO ADA, which sets forth specific procedural requirements of Best Information Available. When exercising this regulation, the TRA not only needs to comply with Regulation 38 requirements applicable thereto, but also the WTO ADA’s procedural requirements thereof shall be met as well.
- [34] Paragraph 6 of Annex 2 of the WTO ADA mandates that:

“If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.”

- [35] This Article provides that the investigating authorities, when using “Best Information Available”, are obliged to follow the procedure:
- (1) to communicate to the party submitting the information of the reasons for refusing access to the information;
 - (2) to give the information supplying party an opportunity to explain;
 - (3) if the explanation is not satisfactory, to state the reasons for refusing access to the information in its published determinations.
- [36] The TRA, however, failed to adhere to these procedural safeguards. Since the initiation notice was issued by the TRA on 3 May 2023, and up until the release of the SEFs on 27 August 2024, the TRA has not issued a single written notification over such an extended period to remind the exporters to resend supplementary questionnaires or warnings that punitive measures will be used in case of non-response. Even more

importantly, during this period, several hearings were held, yet the TRA did not once verbally notify the investigated exporters of any matters requiring clarification. As a result, the investigated exporters were not given any opportunity to provide explanations. The TRA just simply stated in the SEF: “*The TRA has determined the residual amount taking account of information provided by overseas exporters in accordance with regulation 38(4)(b)*”, without affording any prior notification or opportunity for explanation, thus seriously breaching the procedural requirements for the use of best facts available under the WTO rules.

- [37] Moreover, the TRA’s selection of the highest dumping margin provided by overseas exporters is not reflective of the “best” available information. The TRA disregarded more reasonable sources of data, including official import statistics or customs returns, information from industry association (like CRIA), and updated EU anti-dumping and countervailing duty rates verified by the European Commission.
- [38] Notably, in Case TS0036, the TRA relied on verified EU data, while it overlooked the EU data and chose the highest dumping margin for Case TD0035. This inconsistent and contradictory approach raises significant concerns about the fairness of the investigation and the accuracy of the information used.

3.3. Unwarranted Use of “Adverse Facts Available”

- [39] The TRA’s determination of residual rates for non-cooperative exporters using the highest dumping margin, in fact, resembles the Adverse Facts Available (“AFA”) approach employed by other jurisdictions, such as the United States.¹⁵ However, *the Trade Remedies (Dumping and Subsidisation) Regulations 2019* does not explicitly provide legal basis for the use of Adverse Facts Available, creating significant legal ambiguity and reducing the predictability of regulatory outcomes. The absence of clear legal provisions for AFA raises concerns about the consistency of such measures with principles of due process and fairness.
- [40] Furthermore, such an application is inconsistent with WTO case practice on “Adverse Facts Available”. The WTO Appellate Body, in the case of *US – Large Civil Aircraft (Second Complaint)*, stressed that the use of adverse inferences requires substantial evidence of non-cooperation.

“In any event, we do not see that this request is sufficiently supported to allow us to make the requested finding. To the extent that the European Union is asking us to draw adverse inferences, we would have expected it to have provided us with a more precise indication of the areas in which the factual record is incomplete, how the lack of information relates to the United States alleged non-cooperation and the specific inferences that it is requesting us to draw. This is because, as a general matter, the need to and justification for

¹⁵ Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws – <https://www.federalregister.gov/documents/2024/03/25/2024-05509/regulations-improving-and-strengthening-the-enforcement-of-trade-remedies-through-the-administration>.

drawing adverse inferences relates to particular instances of non-cooperation or withholding of evidence and is context-specific.” (Appellate Body Report, 2012, para. 548)

- [41] It further outlined that parties requesting the application of adverse inferences must provide: (i) a precise indication of the areas in which the factual record is incomplete, (ii) how the lack of information relates to the other party’s non-cooperation, and (iii) the specific inferences that it is requesting to draw.
- [42] The TRA’s reliance on the highest dumping margin established for a Product Control Number (PCN) during the period of investigation does not meet these stringent requirements and lacks sufficient evidentiary support. As stated in Section 3.1, TRA had no grounds to consider other Chinese exporting producers as non-cooperative, meaning the TRA had not met the prerequisites for applying this regulation.
- [43] Also, the TRA has neither demonstrated how the lack of information was related to the other party’s non-cooperation nor provided a detailed analysis of the specific inferences it intended to draw. As such, this approach fell significantly short of the requirements for applying the Adverse Facts Available rule as outlined by international WTO case law and undermined the fairness of both proceedings.

4. Product likeness

4.1. Physical, chemical and technical characteristics

- [44] The TRA’s conclusion that *“Casings can then be considered for retreading. Around 85% of a retreaded tyre is made up of a casing. It follows that the physical characteristics and chemical makeup of a casing are the same as a new tyre except for the wear it has suffered through use”*¹⁶ is not accurate. While it is true that retreaded tyres consist of up to 85% reused casings, this does not negate the significant differences in their physical, chemical, and technical characteristics compared to new tyres. New tyres are made from entirely fresh materials, including new rubber compounds and steel, which offer consistent performance and durability. In contrast, retreaded tyres reuse existing casings, adding new tread layers, which may result in varying performance based on the casing’s condition. Retreaded tyres are subjected to stringent inspections and processes but still have different structural properties compared to new tyres.
- [45] Additionally, UK guidelines on retreading focus on resource efficiency, highlighting that up to 85% of the original tyre material is reused in the process. While retreading is more environmentally sustainable, this reusability impacts the overall technical characteristics, including the tyre’s rolling resistance and overall performance over its lifespan. Also, over-retreading can lead to reduced performance, decreased durability, and an increased risk of tyre failure. The chemical composition of a retreaded tyre may also differ depending on the age and wear of the original casing.¹⁷

¹⁶ TD0035 - Bus and Lorry Tyres from China - The Statement of Essential Facts.

¹⁷ See: <https://www.swanky-tyres.com/tyre-retreading>.

4.2. Channel of distribution

- [46] Due to the different uses and applications, new and retreaded tyres have different sales channels and consumers. New tires from China are typically distributed through more traditional, tiered supply chains, involving manufacturers, wholesalers, and retailers. Many Chinese tire manufacturers sell their products through large importers or wholesalers, who then distribute them to retailers and end consumers.¹⁸ In the UK, the distribution channels for retreaded truck and bus tires are primarily directed toward large commercial fleets, transport operators, and public service institutions (such as bus companies). Retreaded tires are usually sold directly by tyre manufacturers and distributors, who work closely with fleet managers and commercial clients.¹⁹
- [47] The customers of new tyres, with the main market on original equipment, are mainly specialised dealers and new bus or truck manufacturers. The main customers of retreaded tyres are mainly transportation firms or automobile service companies, and specialised dealers are merely regarded as intermediaries.²⁰ The economic activity of the transportation business, which is constantly transporting goods or passengers from A to B, the replacement market for retreaded tyres is naturally larger than the original equipment market for new tyres.

4.3. Competition

- [48] In the Section E '*Competition in the Market*' of SEF, the TRA has not provided a detailed analysis to substantiate the existence of competitive relationships between the products under review. In the absence of sufficient evidence, it is not appropriate to conclude that a competitive relationship exists between the two types of tyres.
- [49] Retreaded and new truck tyres do not compete directly with each other, as their main markets, applications, cost, and user preferences often differ. The retreaded tyres market constitutes a secondary "*after-service*" market in relation to the market for new tyres, while new tyres could not constitute a substitute for retreaded tyres. The retreading is performed to prolong the life of a tyre and postponing the purchase of a new tyre, the new tyres could not be competitive and risk the market of the retreaded tyres.
- [50] The main uses and applications of new and retreaded tyres are different. New tyres are more used for the original equipment, whereas retreaded tyres are not. Besides, new tyres are more likely to be applied to places that need high quality and stability, including the steering axle, the front of tractor units, and trucks carrying dangerous goods. The majority of retreaded tyres are applied to truck trailers and the drive axle of the truck.
- [51] One of the primary differences between the two types of tyres is their cost-effectiveness. Retreading tyres can save customers a significant amount of money compared to

¹⁸ See: <https://tireindustryresearch.com/2016/03/24/tire-distribution-channels-in-process-of-change/>.

¹⁹ See: <https://www.automotivepurchasingandsupplychain.com/bridgestones-makes-multi-million-pound-investment-in-retread-tyre-facility/>.

²⁰ See European Commission Case COMP/E-2/36.041/PO — Michelin, paras. 114.

purchasing new tyres. The cost of retreaded tyres is typically lower because the tyre casing, which is the most expensive part, is reused. This makes retreaded tyres an attractive option for fleet operators and businesses aiming to reduce expenses.²¹

- [52] The UK-retreaded industry is supported for its environmental benefits and plays a vital role in reducing waste and promoting recycling. “*Truck fleet operators under pressure to cut their carbon footprint and boost their green credentials should start fitting retread tyres*”, says Michelin.²² Retreading tyres promotes sustainability by extending their lifespan and reducing waste. Retreading conserves valuable resources and reduces the environmental impact associated with tyre manufacturing and disposal. Choosing retreaded tyres will contribute to a more sustainable approach to tyre maintenance and support the circular economy. It offers a unique value proposition compared to the new tyres imported from China.²³
- [53] Based on the aforementioned arguments, the two types of tyres exhibit significant differences across various aspects, which leads to the conclusion that there is no direct competitive relationship between them.

5. PARTICULAR MARKET SITUATION

- [54] CRIA strongly disagrees with TRA’s findings of Particular Market Situation in relation to China under Section G2.2 of SEF TD0035.
- [55] The Trade Remedies Regulations 2019 provides the following definition of the PMS under the Regulation 7(4):

(4) For the purpose of paragraph (2)(b), a “particular market situation” includes situations where—

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

- [56] Under the WTO jurisprudence, the concept of “*particular market situation*” within the meaning of Article 2.2 of WTO ADA has not been explicitly defined. The Panel in *Australia – Anti-Dumping Measures on Paper* referred to the interpretation provided in the GATT panel in *EEC – Cotton Yarn* that:

“a ‘particular market situation’ is only relevant insofar as it has the effect of rendering domestic sales unfit to permit a proper comparison. The phrase ‘particular market situation’ does not lend itself to a definition that foresees all the varied situations that an investigating authority may encounter that would fail to permit a ‘proper comparison’.”²⁴

²¹ See: <https://www.swanky-tyres.com/tyre-retreading#section-6>.

²² See: <https://www.fleetnews.co.uk/features/retread-truck-tyres-to-cut-carbon-footprint>.

²³ See: <https://btmauk.com/retreading/sector-profile/>.

²⁴ *Australia – Anti-Dumping Measures on Paper* -Report of the Panel, para. 7.21.

- [57] CRIA finds no meaningful explanations with regard to how the alleged market imbalances render domestic sales unfit to permit a proper comparison of normal value and export price.
- [58] Moreover, the factual data provided by the anonymous data largely reassembles the allegations contained in the [European] ‘*Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the Purposes of Trade Defence Investigations*’.²⁵
- [59] In CRIA’s view, this source fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value. As indicated in the Commission Report itself, it has been prepared by the Commission with the specific purpose²⁶ of facilitating Union industries to lodge a complaint in the area of trade measures and apply the highly questionable and WTI-incompatible methodology of “significant distortions” under Article 2(6a) of the EU Anti-Dumping Regulation.
- [60] The fact that the Commission Report has been drafted with such a deliberate objective in mind automatically removes any likelihood for an impartial and objective analysis of the state of Chinese economy and market. Because the Commission Report has been tailored to meet the purpose of providing the applicant with a readily made “analysis” of the underlying economic circumstances in China, it is intended to be included in any complaint requesting the initiation of a trade defence investigation and may not be qualified as objective evidence.
- [61] In this context, CRIA respectfully requests the TRA to rely on its own information and take into due account the position provided by the Government of China in this regard.

6. NO INJURY CAUSED BY THE CHINESE IMPORTS TO THE UK DOMESTIC INDUSTRY

- [62] CRIA submits that a critical and unbiased review of injury factors pertaining to the UK industry performance confirms no material injury experienced by the UK producers from 2019 until the end of the IP.
- [63] Before commenting on the state of the UK industry in substance, the CRIA is obliged to comment on important methodological shortcoming in the TRA’s material injury analysis.
- [64] The TRA referenced profit margins from a prior EU case—EU Regulation 2018/1690—as a benchmark for evaluating the UK industry. However, this methodology is inconsistent. While the TRA relied on the high profit margins from the previous EU case which created an imbalanced approach, it disregarded the updated anti-dumping

²⁵ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the Purposes of Trade Defence Instruments, SWD(2017) 483 final/2, Brussels, 20.12.2017 (the “Commission Report”), updated version of 10 April 2024.

²⁶ See the wording in the Introduction section of the Commission Report.

and countervailing duty rates that were subsequently verified by the European Commission. The CRIA submits that this selective use of data reflects a clear dual standard, which has inevitably resulted in an unfair outcome for the case.

- [65] Also, regardless of the position taken over the likeness of the new and retreaded tyres, neither the TRA nor any interested party in the proceedings object to the fact that these distinct types represent, at least, two separate market segments. Since UK producers hold a market share of 80% of the UK retreaded tyres market segment, the TRA is obliged to make a separate analysis thereof for the purpose of objective examination based on positive evidence.
- [66] The CRIA strongly disagrees with TRA's approach to conduct the analysis to the UK tyres market as a whole only, without due consideration of the evolution taking place within each distinctive market segments. Furthermore, CRIA submits that separate analysis of retreading segment of the UK tyres market would show even better performance of the UK industry.
- [67] In support of this claim, the CRIA refers to the WTO jurisprudence regarding analysis of segmented markets. In *United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, the Appellate Body interpreted the obligation of the investigating authority to make an "objective examination" imposed by the Article 3.1 WTO ADA in light of segmented v. entire market analysis.
- [68] Given the high relevance of the findings in that case, CRIA provides extensive quotation dealing with the circumstances in question:

[i]t may be highly pertinent for investigating authorities to examine a domestic industry by part, sector or segment. However, as with all other aspects of the evaluation of the domestic industry, Article 3.1 of the Anti-Dumping Agreement requires that such a sectoral examination be conducted in an "objective" manner. In our view, this requirement means that, where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole. Or, in the alternative, the investigating authorities should provide a satisfactory explanation as to why it is not necessary to examine directly or specifically the other parts of the domestic industry. Different parts of an industry may exhibit quite different economic performance during any given period. Some parts may be performing well, while others are performing poorly. To examine only the poorly performing parts of an industry, even if coupled with an examination of the whole industry, may give a misleading impression of the data relating to the industry as a whole, and may overlook positive developments in other parts of the industry. Such an examination may result in highlighting the negative data in the poorly performing part, without drawing attention to the positive data in other parts of the industry. We note that the reverse may also be

true – to examine only the parts of an industry which are performing well may lead to overlooking the significance of deteriorating performance in other parts of the industry.

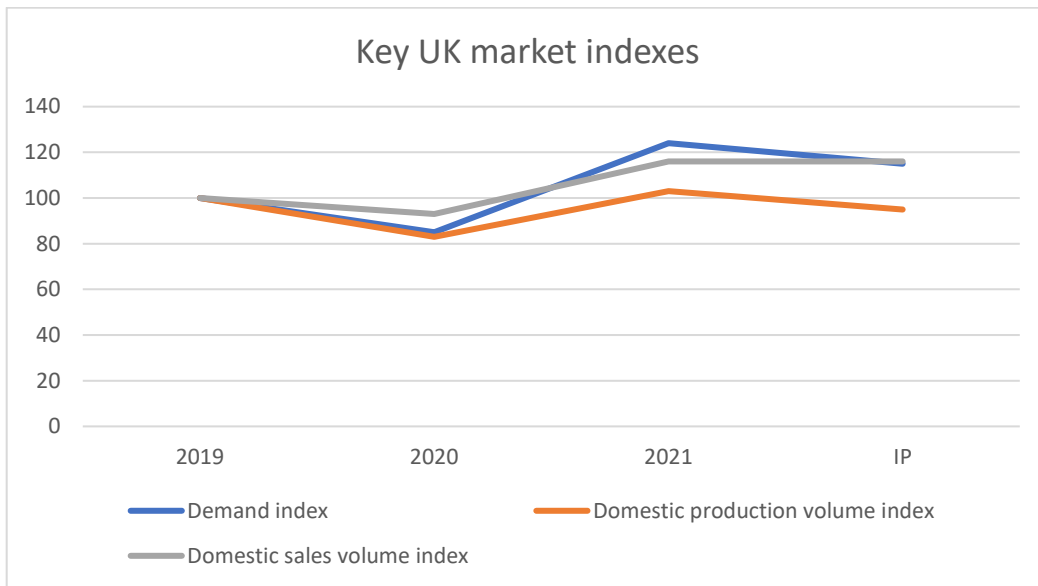
Moreover, by examining only one part of an industry, the investigating authorities may fail properly to appreciate the economic relationship between that part of the industry and the other parts of the industry, or between one or more of those parts and the whole industry. For instance, we can envisage that an industry, with two parts, may be overall in mild recession, where one part is performing very poorly and the other part is performing very well. It may be that the relationship between the two parts is such that the healthier part will lead the other part, and the industry as a whole, out of recession. Alternatively, the healthy part may follow the other part, and the industry as a whole, into recession.²⁷ [emphases added]

- [69] The Appellate Body therefore found that in the segmented markets (such as tyres market in the UK) an examination of the entire market does not suffice a proper assessment of the actual state of the domestic industry, and does not, therefore, satisfy the requirements of “*objective examination*” under Article 3.1 WTO ADA.
- [70] Thus, in line with WTO jurisprudence and based on the factual background of the present case, CRIA respectfully requests the TRA to complete the analysis of the material injury indices by the breakdown to ‘new’ and ‘retreaded’ tyres segment. Failure to follow this substantiated approach would compromise the entire evaluating efforts of the investigating authority.
- [71] In order to understand the actual state of the UK industry, it is necessary to analyse overall data in the context of dominating market conditions, rather than each indicator in isolation. Under this reasoning, demand data serves as a reasonable threshold for measuring the performance of all market stakeholders.
- [72] The analysis of Union demand index as reported under Table 20 of the SEF TD0035 reveals overall positive trends of the UK market. Expectedly, there was a temporary 15% drop in demand in 2020 due to COVID-19 pandemic measures, which followed by outstanding growth in 2021 and remained high during the PoI.
- [73] By analysing key indicators of the UK industry performance against market demand trends, CRIA finds no material injury to the domestic producers. Specifically, the evolution of domestic industry sales is the main factor for the material injury analysis. As follows from the Table 16 of SEF TD0035, UK industry sales followed closely the demand patterns. Domestic sales lowered down by 7% during the COVID-19 pandemic but recovered and increased by outstanding 23% in 2021; the same level has been maintained during the PoI. While domestic production did not show the same high level of growth, it fluctuated around the same level from 2019 until the end of the PoI. This

²⁷ WT/DS184/AB/R, page 69.

is reasonably explained by the increased sales from stocks that went down over the same period.

[74] CRIA provides the visual presentation of above observations in the graph below:



Source: SEF TD0035 and TS0036

[75] The profitability is yet another crucial indicator of the alleged material injury to the UK industry. Table 17 of the SEF TD0035 confirms that the UK industry operated profitably over the entire period considered, with the highest profit margin around 4% during the PoI.

[76] In addition to profitability, other data also demonstrates the absence of material injury. Production output by value fluctuated similarly from 2019 to 2021, but increased during the PoI, indicating no significant downturn. Total investments across the industry increased throughout the injury period. Specifically, investments relating to like goods increased from 2019 to 2021, before experiencing a slight decrease during the PoI; however, they remained above the 2019 level.

[77] In the context of the material injury analysis, CRIA would like to share several substantive comments provided by Imported Tyre Manufacturers' Association:

- The SEF TD0035 report, para.421, mentions the Michelin factory in Ballymena having to close down allegedly due to imports from China. In fact, when the factory did close down in 2018, it was widely reported by Michelin that this closure was due to a significant decrease in demand for TBR following the European financial crisis in 2007, so the company decided to restructure and increase the production of TBR tyres in the Michelin plants in Dundee and Stoke on Trent.
- Chinese casings are suitable for retreading; A Chinese producer, [Company name removed from Non-confidential version] argued before the TRA that

they have had their remoulds produced by two of the leading UK retreaders for several years.

[78] Considering the facts above, the TRA is kindly invited to contact the Association directly for further details.

[79] In light of the foregoing and given that the TRA acknowledged in the SEF that the performance of the UK industry has been reasonably stable, CRIA respectfully submits that the UK industry has not suffered material injury caused by imports from China, nor there is a likelihood of recurrence thereof as outlines in the following section.

7. Likelihood of injury recurrence

7.1. The UK is not a priority market for the Chinese exporters

[80] The United Kingdom is not considered a priority market for Chinese exporters, as demonstrated by customs data; thus, exports from China to the UK are unlikely to pose a significant threat to the UK's domestic industry. Given the relatively modest scale of Chinese exports to the UK in comparison to other markets, it is improbable that these exports would adversely impact the competitiveness or viability of UK-based industries. Consequently, the risk of injury from Chinese exports to the UK remains minimal.

The screenshot shows the ITC Trade Map interface. The product is '40112000 - New pneumatic tyres, of rubber, of a kind used on buses or lorries'. The table below shows the 'List of importing markets for a product exported by China'. The columns represent the years 2018, 2019, 2020, 2021, 2022, and 2023. The UK is highlighted with a red box, and a red arrow points to its 2023 value.

Country	Exported value in 2018	Exported value in 2019	Exported value in 2020	Exported value in 2021	Exported value in 2022	Exported value in 2023
World	7,250,026	6,598,855	8,014,873	9,199,252	10,987,148	12,723,721
Mexico	336,845	339,999	486,247	486,247	486,247	486,247
Russian Federation	173,508	162,333	231,254	231,254	231,254	231,254
United States of America	649,489	497,557	626,648	676,607	676,607	676,607
United Arab Emirates	350,482	228,206	228,206	228,206	228,206	228,206
South Arabia	317,894	314,222	314,222	314,222	314,222	314,222
Malaysia	145,919	151,034	151,034	151,034	151,034	151,034
UAE	160,716	167,781	175,800	209,500	315,184	315,184
Australia	243,557	243,517	301,794	316,757	303,181	303,181
Indonesia	126,613	111,023	175,419	241,878	289,002	289,002
Norway	207,673	203,339	229,330	211,025	259,705	259,705
Canada	163,369	172,818	225,006	294,309	236,672	236,672
Philippines	189,016	157,218	220,087	216,932	217,782	217,782
France	107,877	76,819	147,591	145,960	210,088	210,088
Viet Nam	151,936	160,231	200,417	225,069	210,563	210,563
China	132,317	127,906	172,878	165,890	169,010	169,010
Korea, Republic of	128,236	132,485	157,635	148,753	163,140	163,140
Brazil	54,950	44,720	123,115	133,257	162,420	162,420
Pakistan	157,307	203,896	194,307	219,499	161,198	161,198
South Africa	117,868	96,714	133,352	127,311	151,407	151,407
Colombia	84,491	81,842	106,603	137,125	141,413	141,413
Peru	86,291	86,254	113,366	114,384	138,774	138,774
Tanzania, United Republic of	74,178	75,810	97,589	123,654	131,234	131,234
Algeria	138,951	115,474	79,746	124,958	125,352	125,352
Ghana	61,023	65,501	65,775	65,190	119,813	119,813
Norway	70,865	82,708	86,840	93,819	114,325	114,325
Egypt	69,821	71,284	96,700	96,565	111,009	111,009
Japan	60,355	65,570	107,705	115,889	108,011	108,011
United Kingdom	71,465	62,700	74,283	73,601	101,826	101,826

[81] Additionally, according to customs data, the annual export volume of truck and bus tyres from China to the UK has been steadily declining, with only a slight increase observed in 2021 and 2023. This trend indicates that there has not been a significant surge in Chinese exports of truck and bus tyres to the UK. Furthermore, this pattern suggests that China does not face an overcapacity in production that necessitates the absorption of excess capacity through increased exports.



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

7.2. Environmental regulation constraints on tyre industry in China

- [82] Further, environmental regulations in China, including penalties imposed under the Atmospheric Pollution Prevention and Control Law of the People's Republic of China, have restricted production capacities in certain regions. For instance, Cooper's Kunshan tyre factory faced production limitations and fines for environmental violations.
- [83] Additionally, China's 14th Five-Year Plan emphasizes the development of environmentally friendly industries, with a particular focus on promoting tyre recycling and green manufacturing technologies. The increased emphasis on green production will impose stricter environmental standards on the tyre industry, including truck and bus tyres, encouraging the adoption of cleaner technologies and restricting environmentally harmful manufacturing practices.
- [84] These regulatory contexts reflect China's increasing emphasis on environmentally sustainable practices in industries like tyre manufacturing, further reducing the likelihood of overproduction.
- [85] In conclusion, the TRA's assertion of overcapacity was fundamentally flawed. The false accusation undermines the fairness and accuracy of the proceedings' outcome.

8. UK ECONOMIC INTEREST TEST

- [86] Pursuant to Regulation 100A(2)(a) of the Regulations, anti-dumping / countervailing measures may only be applied if the UK economic interest test is met.
- [87] In this context, the CRIA submits that both SEFs provides no meaningful analysis how the proposed maintenance of the measures, especially with a substantive increase of the level of residual duty, correlates with the interest of importers and consumers. The TRA's findings under sections I3.3 and I3.4 of the SEF TD0035 does not provide the summary of the positions expressed by the respective interested parties in the proceedings but limit to a statement that "*the product is somewhat important to them*".
- [88] Currently, the UK economic interest test seems to be manifestly one-sided to the interest of the UK retreading industry and to the detriment of all other market participant, including the UK national interest in general. To balance the interest test, CRIA kindly suggests hearing the positions of other UK stakeholders, including the Imported Tyre Manufacturers' Association.
- [89] CRIA maintains its position that revoking the existing anti-dumping/ countervailing measures is believed to improve the operating and economic conditions of UK importers, distributors, fleets and their customers.

9. CONCLUSIONS

- [90] By means of these written comments, CRIA strongly contests TRA's findings and recommendations as set out in the SEF documents.
- [91] CRIA maintains and further substantiates its position regarding product likeness and the likelihood of injury to the UK industry.
- [92] Given the nature of procedural shortcomings in relation to Chinese exporting producers, CRIA requests the TRA to terminate the transition reviews and repeal the measures in question.
- [93] Should the TRA nevertheless decide to maintain the measures, it is indispensable that the level of duty to be maintained within the lower level adjusted by the EU upon reopening/review investigation.