TS0036

TRANSITION REVIEW OF COUNTERVAILING DUTIES APPLYING TO CERTAIN PNEUMATIC TYRES USED FOR BUSES OR LORRIES ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA

COMMENTS ON STATEMENT OF ESSENTIAL FACTS ON BEHALF OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

OPEN VERSION

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1 INTRODUCTION

1. The present submission provides the comments of the Government of the People's Republic of China ("GOC") regarding the Statement of Essential Facts of transition review of countervailing duties applying to certain pneumatic tyres used for buses or lorries originating in the People's Republic of China (Case No. TS0036) of 27 August 2024.

2. In a nutshell, the GOC respectfully re-submits that, in the present case, the requirements for the initiation of an AS investigation as set out in the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), the UK Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("UK Regulations") and Schedule 4 to the UK Taxation (Cross-border Trade) Act 2018 ("TCBA") are not met. For this reason, the present transition review proceeding should be terminated forthwith.

3. The GOC re-submits that all allegations on GOC subsidies benefitting exporting producers of the product concerned identified in the EU CVD Regulation and now subject of TS0036 are both legally and factually unfounded and do not even remotely reflect the PRC legal, economic and regulatory framework relevant to the exporting producers of the product concerned.

2 APPLICABLE LEGAL STANDARD

4. The GOC recalls that Article 11.2 of the SCM Agreement [1] sets out the evidentiary standard that must be satisfied in an application submitted to an investigating authority by or on behalf of a domestic injury. Article 11.2 of the SCM Agreement provides as follows:

> "*An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:*
> *[…] (iii) evidence with regard to the existence, amount and nature of the subsidy in question; […]." (Underlining added).*

5. In addition, Article 11.3 of the SCM Agreement requires investigating authorities to "*review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.*"

6. As noted by the Panel in *US – Supercalendered Paper*, the obligation of WTO Members in relation to the assessment of the sufficiency of evidence in an application finds expression in Article 11.3 of the SCM Agreement and must be read together with Article 11.2, meaning that "*if an investigating authority initiates an investigation without sufficient evidence, it acts inconsistently with Article 11.3 of the SCM Agreement.*"[2]

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1 Incorporated under UK law by paragraph 9(1) of the TCBA.

2 Panel Report, *US – Supercalendered Paper*, para. 7.145.

7. In *China – GOES*, the Panel clarified that, as implied by the language of Article 11.3 of the SCM Agreement, a part of the investigating authority's determination of whether there is "*sufficient evidence*" to justify the initiation of an investigation must entail an "*assessment of the accuracy and adequacy of the evidence furnished*."[3] In that case, the Panel laid out certain criteria to be applied by investigating authorities to determine whether the initiation of a countervailing duty investigation is justified on the basis of the evidence submitted in an application, and it clarified that an applicant is required to provide sufficient evidence of the existence and the nature of a subsidy.[4] Evidence of the "*existence of a subsidy*" requires evidence of a financial contribution by a government or public body and a benefit to the recipient.[5] The Panel further clarified that there must be evidence of the existence of a present subsidy, including the existence of a benefit during the investigation period.[6] The evidence of the "*nature of the subsidy*" includes evidence regarding whether the subsidy is specific.[7] Accordingly, it is not enough to adduce evidence of only one of the three elements of a countervailable subsidy, *i.e.*, financial contribution by a public body, benefit, or specificity. The *GOES* Panel further noted that "*sufficient evidence*" regarding the existence, amount and nature of the alleged subsidies implies that "*adequate evidence, tending to prove or indicating the existence of these elements, is required*".[8]

8. The above-mentioned legal standards concerning the sufficiency of the evidence in an application established by the Panel in China – GOES were reiterated by the Panel in *US – Countervailing Duties (China)*.[9]

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3 Panel Report, *China – GOES,* para. 7.52. (Underlining added).
4 Panel Report, *China – GOES,* paras. 7.51-7.54.
5 Panel Report, *China – GOES,* para. 7.58.
6 Panel Report, China – GOES, paras. 7.71 – 7.72. The Panel in China – GOES underlined that the existence of subsidy refers to a present subsidy and not to some historical subsidy given to some company. See para. 7.96.
7 Panel Report, *China – GOES,* paras. 7.60-7.61.
8 Panel Report, *China – GOES,* para. 7.55.
9 Panel Report, *US – Countervailing Duties (China),* para. 7.146.

9. Finally, while WTO panels and the Appellate Body have not provided an exhaustive list of evidence and circumstances that meet the "sufficient evidence" standard regarding the nature, existence and amount of a subsidy, their rulings indicate that certain types of statements and assertions are inadequate to meet this standard including, among others, the following:

(i) simple assertions unsubstantiated by relevant evidence;[10]

(ii) "[g]eneral information about government policy, with no direct connection to the subsidy programme at issue, is not 'sufficient evidence' of specificity."[11]

(iii) the fact that a company is the user of a program is not evidence that it is the sole or one of the limited users of the program thereby demonstrating specificity;[12] and

(iv) in the absence of information on the allocation of the benefit of the subsidy to the proposed investigation period, the requirement to demonstrate the existence of a benefit in the expected investigation period is not met.[13]

10. In addition, pursuant to Article 2.1(b) of the SCM Agreement, specificity does not exist if the granting authority – or the legislation pursuant to which the granting authority operates – establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy, provided that (i) eligibility is automatic, (ii) such criteria or conditions are strictly adhered to, and (iii) such criteria or conditions are clearly spelt out in laws, regulations or other official documents, so as to be capable of verification.

11. Against this legal background, the GOC notes that all the findings in the SEF regarding subsidization do not meet the required evidentiary standards and the current measures should be revoked by the TRA.

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10 SCM Agreement, Article 11.2.

11 Panel Report, *China – GOES,* para. 7.66.

12 *ibid,* para. 7.107.

13 Panel Report, *China – GOES,* para. 7.74.

3 SUBSIDIZATION

3.1 The bus and lorry tyres are not an "encouraged" industry.

12. Based on Article 11.2 of the SCM Agreement, the GOC respectfully submits that the TRA's findings that the bus and lorry tyres industry is encouraged is incorrect and does not show that the measures at issue are specific within the meaning of Article 2 of the SCM Agreement. The TRA has extracted certain terms and phrases out of context from various Chinese documents, misrepresented others and tried to tie them together to show that the GOC allegedly promotes the bus and lorry tyres industry. However, a complete reading of these documents would nevertheless demonstrate that the statements are baseless and not supported by "positive evidence".

13. It is underlined that Product catalogue or the Catalogue for Guiding Industry Restructuring are neither mandatory nor legally binding; they are merely guidance documents. As the TRA would be well aware, several Asian countries, such as India, have had similar industry plans.

14. In any event, the Legislation Law of China provides that only the Constitution, laws, administrative regulations, and local regulations and rules constitute general legislation in China. The difference between these types of binding measures and non-mandatory plans is also clear from the fact that the plans do not contain actual legal provisions, sanctions, or rules on applicability. Therefore, to the extent that the TRA has relied on these plans in its analysis of the alleged subsidization, its claims are based on a misperception of the policy and therefore not accurate and adequate evidence.

15. Without prejudice to the above, if all the documents relied upon by the TRA are considered holistically (e.g., *China High-tech Products Export Catalogue*, *China High-tech Products Catalogue, the Catalogue for Guiding Industry Restructuring*), all industries and enterprises as well as sectors of the Chinese economy are covered and thus "encouraged". Therefore, following the TRA's logic, there can be no specificity.

3.2 Alleged government revenue forgone or not collected

16. The GOC strongly objects to the findings on the alleged tax schemes as the below-mentioned alleged subsidies are not satisfied the specificity threshold.

3.2.1 Enterprise Income Tax privileges and benefits for High and New Technology Enterprises

17. According to the SEF, the Enterprise Income Tax ("EIT") privileges and benefits for High and New Technology Enterprises constitute countervailable subsidies.[14] The GOC disagrees and maintains that this alleged subsidy scheme is not specific, as the legislation pursuant to which the granting authority operates establishes objective criteria or conditions governing the eligibility for, and the amount of, the tax reduction, eligibility is automatic, and the qualification criteria and conditions are strictly adhered to.

18. As already stated above, Article 2.1(b) of the SCM Agreement provides that specificity shall not exist if the granting authority establishes objective criteria or conditions governing the eligibility for and the amount of the subsidy, provided that (i) eligibility is automatic, (ii) such criteria or conditions are strictly adhered to and (iii) such criteria or conditions are clearly spelt out in laws, regulations or other official documents, so as to be capable of verification. This is the case

[14] SEF Section G1.1.4.

of the alleged EIT privileges claimed by the Applicant for High and New Technology enterprises.

19. The legislation pursuant to which this alleged scheme operates clearly sets out objective criteria for eligibility. Such criteria are applied automatically. Therefore, the tax authorities concerned have no discretion in applying the specific tax rate when the conditions for eligibility are met.

20. According to footnote 2 of the SCM Agreement, eligibility criteria are considered objective if they are neutral, do not favour certain enterprises over others, are economic in nature, and are horizontal in their application. This is the case here. Access to the specific tax rate is open to all enterprises and does not favour certain enterprises over others.

3.2.2 Tax offset for research and development

21. In a similar manner as the schemes discussed above, the TRA finds that research and development ("R&D") expenses incurred in the development of new technologies are additionally deductible and that this constitutes a countervailable subsidy.

22. The GOC recalls that that tax offset for R&D is available to all companies across China and the scheme is operated on the basis of objective criteria. Furthermore, the State Taxation Administration has no discretion in its application. Thus, this alleged subsidy is also not specific.

23. Indeed, tax offset for R&D is based on a specific legislative source consisting of legislative provisions setting out objective criteria for eligibility that are applied consistently and automatically, just like the schemes discussed above.

24. The GOC respectfully reminds the TRA that in its Statement of Essential Facts (SEF) In AS0022, an anti-subsidy investigation concerning the imports of

Optical Fibre Cables imported from China, it's the TRA found that "*Article 30 of the enterprise income tax law does not place specific restrictions on the industries that are eligible for this particular tax offsetting programme*"[15] and "*therefore, [TRA] did not identify any information that indicated the programme is explicitly specific (regulation 22(2(a) of the Regulations), or that it is in fact applied in a specific manner (regulation 22(2)(b) of the Regulations)*".

3.2.3 VAT exemption on imported equipment

25. With regard to the alleged VAT exemption on the use of imported equipment, as noted by the GOC in the narrative part of the response, no such exemption exists.

26. As established by the GOC in previous investigations, the VAT exemption on the use of imported equipment was terminated as of 1 January 2009. The relevant document establishing this is provided with the GOC's questionnaire response.

27. Thus, this alleged program cannot be legally investigated. In any event, no evidence of any benefit to the Chinese bus and lorry tyre producers in the IP was provided by the TRA.

28. That said, the GOC considers that, in any event, there is no benefit pursuant to the alleged VAT exemption, as is also recognized by the US Department of Commerce. The latter does not investigate the above-mentioned VAT program because, under the consumption-based VAT regime, as applicable in China, the VAT is a consumption tax that a company conveys to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden. The input VAT is offset against output VAT and the

[15] Statement of Essential Facts, AS0022,

difference collected is remitted or received from the government as the case may be, but there is no revenue forgone by the government or any benefit to the exporting producers.

29. The GOC notes that it is the USDOC's consistent policy not to investigate VAT exemptions on capital equipment and this policy is applied across the board in all countervailing duty investigations. The rationale for not investigating VAT exemptions on imported equipment was, for instance, also applied in the US countervailing duty investigation against *Hot-Rolled Steel from Korea* and was explained by the USDOC as follows:

> **2. Value-Added Tax (VAT) Exemptions on Imported Goods under Article 27 of the VAT Act and RSTA Article 106: Exemption from VAT**
>
> Hyundai Steel, POSCO, POSCO International, POSCO Chemical, POSCO M-Tech, POSCO SPS, and POSCO Terminal received VAT exemptions on certain imported goods during the POR under Article 27 of the VAT Act and/or RSTA Article 106.[343] The GOK reported that imports of certain products are exempt from the VAT under Article 27 of the VAT Act and/or RSTA Article 106.[344]
>
> In the investigation of *DRAMS from Korea*, Commerce explained:
>
> > Under the GOK's VAT Act, a company is normally assessed a 10 percent VAT on imported equipment used for business. In turn, the company collects a VAT from its customer as part of the price of the goods produced by the company. The VAT paid by the company on the imported equipment is called the "input" tax, while the VAT that the company collects from the customer is called the "output" tax. The company submits a VAT report to the government on a monthly basis … which reconciles the two VAT amounts by paying to the government only the amount by which the output tax exceeds the input tax. Conversely, if the input tax exceeds the output tax, the government refunds the difference to the company. Assessment and reconciliation of this tax burden continues in this manner, down through the distribution chain to the final consumer of the finished product. Thus, ultimately, the company pays nothing to the government and merely conveys the VAT; it is the final consumer, not the producer, who actually pays the VAT to the government. Respondent companies were exempted from the "input" VAT normally payable at customs clearance on imported equipment for bonded factories under construction pursuant to Article 106 of the RSTA.[345]
>
> Commerce has examined similar VAT exemptions or remissions in past proceedings and found that the amount of exempted or remitted VAT was, in itself, not countervailable within the meaning of 19 CFR 351.510 and 19 CFR 351.517.[346] Commerce further determined that exempting the tax at the time of importation, rather than the alternative, *i.e.*, recovering the tax at the time of reconciliation, conferred no benefit because of the short time difference between the two events. Specifically, in *Hot-Rolled Steel from Thailand*, Commerce found that the VAT was reconciled in the company's accounting records on a monthly basis, and that the potential time-value windfall from a month's lag time was insignificant and, therefore, conferred no benefit.[347]

30. Thus, the VAT exemption program cannot be legally investigated.

3.3 Alleged preferential financing

31. While the GOC's questionnaire response gives the factual information, provided below are the GOC's comments as regards the illegality of the investigation of the unspecified and inexistant preferential lending and the supposed government control and distortion of the financial market in China. The GOC strongly opposes such allegations which are not rooted in facts but are based on assumptions, and the misinterpretation and misrepresentation of information.

3.3.1 Alleged referential loans by state-owned commercial banks

32. The GOC respectfully submits that the TRA has misrepresented the relationship between state-owned commercial banks and the GOC to claim that state-owned commercial banks are "public bodies".

33. First, it is recalled that the Appellate Body in *US – Carbon Steel (India)*, clearly established the below-mentioned criteria for assessing the existence of a "public body":

> "*4.36. We believe that the Panel, in grappling with the case-by-case nature of public body determinations, correctly articulated the appropriate standard when it observed that "evidence that a government* ***exercises*** *meaningful control over an entity and its* ***conduct*** *may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions." However, the Panel erred in its substantive interpretation of Article 1.1(a)(1) by construing the term "public body" to mean* ***any*** *entity that is "meaningfully controlled" by a government. Consequently, the Panel erred in its application of Article 1.1(a)(1) to the USDOC's public body determination in the underlying investigation, in effect treating the GOI's ability to control the NMDC as determinative for purposes of establishing whether the NMDC constitutes a public body. Moreover, the Panel failed properly to consider whether the USDOC had adequately explained and supported, in its written determination, the basis for its finding that the NMDC is a public body.*
>
> *4.37. As noted above, the Appellate Body has explained that the term public body in Article 1.1(a)(1) of the SCM Agreement means "an entity that possesses, exercises or is vested with governmental authority."*

> *The **substantive legal question** to be answered is therefore whether one or more of these characteristics exist in a particular case. This **substantive standard** should not be confused with the **evidentiary standard** required to establish that an entity is a public body within the meaning of the SCM Agreement. Although the Panel quoted extensively from the Appellate Body report in **US – Anti-Dumping and Countervailing Duties (China)**, it appears to have blurred the distinction drawn by the Appellate Body in that report between the existence of control by a government over an entity, on the one hand, and "meaningful control", on the other hand. Thus, the Panel did not analyse, in our view, the question of whether the GOI in fact exercised control over the NMDC and its conduct. Nor did the Panel assess whether the USDOC had properly established that the NMDC "possesses, exercises or is vested with governmental authority", and is therefore a public body."*[16](Underlining added)

34. Firstly, the GOC submits that the law prohibits any government or government department from interfering in the lending decisions of commercial banks. Article 4 of the Law on Commercial Banks stipulates that commercial banks shall conduct their business in accordance with the law and shall not be subject to interference by any organization or individual. In addition, article 5 of the Law stipulates that local governments and government departments at all levels, public institutions and individuals are prohibited from interfering in bank operations.

35. Secondly, all banks must strictly abide by the Commercial Banks Law and operate on the basis of the principles of safety, liquidity and efficiency, practicing autonomous operation, bearing their own risks, being responsible for their own profits and losses and exercising self-restraint. As noted above, commercial banks in China are incorporated under the Company Law and most

[16] Appellate Body Report, *US – Carbon Steel (India)*, paras. 4.36-4.37.

are listed on the stock exchange; are governed by a board of directors; disclose information in accordance with the Securities Law; are subject to scrutiny by public investors; and are profit-oriented, maintaining and increasing the value of their shares. Therefore, the Chinese Government cannot and will not interfere in the lending decisions and operations of financial institutions.

36. Finally, the Government of China emphasizes that foreign banks are allowed to operate in China and to conduct lending business in China alongside Chinese banks.

3.4 Alleged provision of goods and services at less than adequate remuneration

3.4.1 Alleged provision of land-use rights at LTAR

37. The GOC submits that the provision of LURs does not constitute a subsidy.

38. Article 2 of the Land Administration Law does not "*[enable] the GOC to provide land at LTAR to promoted industries, including producers of the goods concerned*."[125] In fact, the reality is that LURs are transferred by public bidding, quotation, or auction in accordance with Land Administration Law. Indeed, pursuant to Article 347 of the Civil Code of the People's Republic of China:

> "*[W]here land is used for industrial, commercial, tourist or entertaining purposes, as commodity residence, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding. The price of the land is established through market competition."*

39. Moreover, Article 3 of the Interim Regulations of the PRC Concerning the

Assignment and Transfer of the Right to the Use of the State-owned Land in Urban provides that:

> "*[a]ny company, enterprise, other organization and individual within or outside the People's Republic of China may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations*."

40. Overall, any legal person or individual in China can acquire and use LURs through fair competition and a public bidding process.

3.4.2 Alleged provision of electricity at LTAR

41. According to the TRA, the provision of power at reduced rates to the bus and lorry industry qualifies as a countervailable subsidy. The GOC disagrees for three reasons.

42. First, the TRA relies on completely unrelated previous investigation to assert that there is *prima facie* evidence that (i) the entities providing power at allegedly reduced rates are public bodies within the meaning of Article 1.1(a)(1) of the SCM Agreement, and (ii) the alleged provision of power at LTAR conferred a benefit to the bus and lorry tyre industry. As noted by the Panel in *China – GOES*, historical evidence of benefit cannot prove the existence of a benefit in the investigation period especially if the subsidy is non-recurring and was granted several years prior to the investigation period.[17] As already noted in relation to the alleged provision of LURs and raw materials at LTAR, the

[17] Panel Report, *China – GOES*, paras. 7.71-7.74.

Application does not provide any *prima facie* evidence of the existence of this subsidy.

43. Second, in any case, the TRA fails to address any evidence of specificity within the meaning of Article 2 of the SCM Agreement. Indeed, the TRA does not even attempt to explain how the alleged provision of power at LTAR would be specific to the Chinese bus and lorry producers. The ability to directly purchase electricity from power generators does not amount to a financial contribution or benefit.

44. It is noted that the Chinese government is conducting the marketization of electricity and it encourages direct transactions between electricity generation companies and electricity users. The prices are determined by the supply and demand on the market.

45. The GOC submits that notes that no specificity exists with respect to the provision of electricity. There are a vast number of user industries for electricity. The industries that purchase/use electricity are not limited to the bus and lorry trye industry, and the bus and lorry tyre industry in China is not a disproportionate or predominant consumer of electricity. The GOC does not impose any limitation on the consumption of electricity by law or policy. Indeed, all companies located in the same region are entitled to the same electricity rate, irrespective of the business sectors. Therefore, the investigation into the alleged provision of electricity at LTAR is inconsistent with Articles 11.2 and 11.3 of the SCM Agreement in this case.

46. Notably, in October 2021, the commercial and industrial electricity catalogue sales price was abolished, and there are no longer any commercial and industrial electricity prices in the electricity price tables. In the Notice of the National Development and Reform Commission on Further Deepening the Market-oriented Reform of On-grid Electricity Price for Coal-fired Power

Generation (see Appendix C3.1 of GOC AS Questionnaire), ("FGJG (2021) 1439") issued in October 2021, the NDRC expressly requires local authorities to abolish the commercial and industrial electricity catalogue sales prices and thus all commercial and industrial electricity users to enter into the electricity trading market. Accordingly, the provinces updated their electricity sale price tariffs, and the catalogue prices for large-scale industrial electricity and general commercial and industrial electricity, which are the electricity categories used by industrial users such as the respondents, were no longer included in the tariffs. This most recent electricity reform demonstrates that the marketization of power prices for the commercial and industry users has been completed. The NDRC or provincial governments no longer sets the electricity tariffs for commercial and industrial electricity users.

3.4.3 Alleged provision of export credit insurance at LTAR

47. The TRA finds that preferential export credit insurance and guarantees are granted to bus and lorry producers and constitute a countervailable subsidy because (i) the China Export & Credit Insurance Corporation ("Sinosure") itself has stated that it is 100% owned by the GOC, established and supported by the GOC to support the PRC's foreign economic and trade development and cooperation. It is led and controlled by the GOC, and implements decisions of the CCP, and (ii) is a GOC body that provides preferential export credit insurance at LTAR to encouraged industries.[18]

48. The TRA's finding that Sinosure acted as a public body in that case does not allow for the conclusion that the same can be assumed for an entirely unrelated industry, especially since the quoted decision was based on facts available, and, in any event, each export credit guarantee is case and product-specific. As confirmed by the Panel in *EC and certain member States – Large Civil Aircraft*,

[18] SEF Section G1.1.2, page 51

findings in previous investigations may not be used to substantiate claims of material injury if the previous investigations relate to other industries.[19] Thus, the TRA has not provided even *prima facie* evidence of subsidization to the bus and lorry tyre industry.

49. Without prejudice to the above, the GOC notes that, for an export credit guarantee or insurance program to be prohibited under the SCM Agreement, the criteria under paragraph (j) of Annex I of the SCM Agreement must be fulfilled. Paragraph (j) provides as follows:

> "*The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.*"

50. In light of the above provision, in order to find that a supposed subsidy exists, the authorities were required at a minimum to demonstrate that the premium rates charged by Sinosure are inadequate to cover the long-term operating costs and losses of the programs.

51. However, the TRA did not address any evidence to demonstrate that the export credit insurance or guarantee provided by the Sinosure is a prohibited subsidy under the SCM Agreement.

52. That said, the GOC notes that, according to the data of Sinosure, its overall long-term operating costs can be covered by the premiums it has been charging over the same period for the types of insurance purchased by the cooperating

[19] Panel Report, *EC and certain member States – Large Civil Aircraft*, para. 7.2083.

exporting producer (short-term export credit insurance). Thus, contrary to the TRA's findings, there is no subsidy in the form of preferential export credit insurance and guarantees and the GOC herewith respectfully requests the TRA to revise its findings.

53. Second, that Sinosure being a SOE is inadequate to assert the existence of a benefit. In *EC and Certain Member States – Large Civil Aircraft* that there is a difference between *"the standard against which the presence or absence of a "benefit" is to be assessed, on the one hand, and evidence relevant to that assessment, on the other"* and that *"the standard for assessing the presence or absence of a benefit is the market, and that nothing in Article 1.1(b) or Article 14 makes a government's "considerations" the lodestone of that standard."*[20]

54. In sum, the TRA did not evidence the receipt of a financial contribution through export insurance to the Chinese bus and lorry tyre producers nor of the existence of any benefit.

55. As regards specificity, the TRA does not indicate the basis of the assertion of specificity. If the reference to the case-by-case provision of the alleged export insurance implies that the subsidy is *de facto* limited to specific companies within the meaning of Article 2.1(c) of the SCM Agreement, the TRA has not explained on what basis it considers *de facto* specificity, i.e., which of the factor/s in Article 2.1(c) of the SCM Agreement does it consider exist. In any event, it is quite clear that, being the Chinese export credit agency, Sinosure seeks to serve a wide variety of economic sectors, industries and firms as confirmed by its annual reports. Moreover, as noted by the Panel in *China – GOES*, differentiated pricing in a market is not evidence of specificity.[21]

56. To conclude, the GOC considers that the TRA failed to find evidence probative of the question whether the alleged export insurance conferred a benefit on the

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20. Panel Report, *EC and Certain Member States – Large Civil Aircraft*, para. 7.1377.
21. Panel Report, *China – GOES*, para. 7.136.

bus and lorry tyre producers. Thus, the findings in respect of this alleged scheme is in breach of the UK's obligations under Articles 11.2, 11.3 and 11.6 of the SCM Agreement.

4. CONCLUSION

89. For the reasons given above, the GOC considers that the findings against bus and lorry tyre products from China does not meet the requirements of the SCM Agreement and the relevant UK provisions. Accordingly, the GOC respectfully requests the TRA to reconsider its findings and recommendation in the transition review of countervailing duties applying to certain pneumatic tyres used for buses or lorries originating in the People's Republic of China.