
**COMMENTS IN THE UK TRANSITION REVIEW OF ANTI-DUMPING
DUTIES ON CERTAIN CERAMIC TILE PRODUCTS ORIGINATING IN
THE PEOPLE'S REPUBLIC OF CHINA**

(TD0027)

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

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1. INTRODUCTION

- [1] On 22 September 2022, a notice of initiation of a transition review of the anti-dumping duties on certain ceramic tiles¹ originating in the People's Republic of China was published by the UK Trade Remedies Authority (TRA).
- [2] The UK transition review is related to the existing anti-dumping measures adopted in the European Union (EU).² Subsequent to the UK's withdrawal from the EU, the UK Secretary of State periodically publishes determination notices³, authorizing the UK Trade Remedies Authority (TRA) to conduct transition reviews to determine if the existing EU trade remedy measures should be maintained, varied or revoked in the UK. A UK transition review considers whether the application of the EU anti-dumping amount is necessary or sufficient to offset dumping of the relevant goods in the UK market, and whether injury to the UK industry in the relevant goods would occur if the anti-dumping amount were no longer applied to those goods.
- [3] This submission is made on behalf of the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ("CCC MC") and its members. CCC MC is a nationwide and industrial non-profit social organization formed voluntarily by Chinese entities engaged in economic activities as regard to metals, minerals and related products, non-metallic minerals and related products, hardware products, building materials products, petroleum and related products, chemical raw materials and related products, as well as the upstream and downstream industrial chains in the above-mentioned fields. CCC MC organizes members in responding to anti-dumping, countervailing and safeguard investigations initiated by foreign countries.

¹ The goods subject to review are described as (i) glazed and unglazed ceramic flags and paving, hearth or wall tiles, (ii) Glazed and unglazed ceramic mosaic cubes and the like, whether or not on a backing, having the following commodity codes: 6907 2100 00; 6907 2300 00; 6907 400 00; 6907 2200 00; and 6907 3000 00.

² Provisional measures were imposed by way of Commission Regulation (EU) 258/2011 of 16 March 2011 (OJ L 70, 17.03.2011, p. 5). On 15 September 2011, the EU imposed definitive duties by way of Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ L 238, 15.9.2011, p. 1). These measures were continued following an expiry review concluded by way of Commission Implementing Regulation (EU) 2017/2179 of 22 November 2017 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 307, 23.11.2017, p. 25).

³ It is noted that the determination notice for transitioning the EU measure imposed on these specific goods has been published. See Notice of determination 2020/18: anti-dumping duty on ceramics tiles originating in the People's Republic of China, Published on 31 December 2020, at <https://www.gov.uk/government/publications/trade-remedies-notices-anti-dumping-duty-on-ceramic-tiles-from-china/notice-of-determination-202018-anti-dumping-duty-on-ceramics-tiles-originating-in-the-peoples-republic-of-china>

- [4] In this submission, CCCMC will show the lack of a legal basis in relation to the imposition of the measures in the UK, as well as the transition review itself. As will be demonstrated by CCCMC, the only way in which the UK could lawfully adopt anti-dumping measures as currently in force is by conducting in full an independent investigation meeting the standards set by the World Trade Organization (“WTO”) in its Anti-Dumping Agreement (“ADA”).
- [5] Moreover, as CCCMC will note in this submission, even if the legal requirements for the measures and the transition review were to be met, which is not the case, there would still not be a valid ground for a continuation of the measures. First, as will be demonstrated in this submission the scope of the goods under consideration, taken over directly from the underlying EU investigation, is so broad that it actually covers several goods that are not even being produced in the UK. At the very least, such products should be excluded from measures should the TRA come to the conclusion that such continuation is recommended. Second, the non-existent or at least heavily decreased threat of injury is lessened further by various environmental regulations in China, which shall undoubtedly lead to a significant decrease of production in China.
- [6] Moreover, CCCMC will demonstrate that due to the current economic situation in the UK, the continuation of measures can only lead to a furthering of inflation and a worsening of the economic situation. Therefore, continuing measures would even be against the UK’s economic interest.
- [7] CCCMC hereby reserves the right to present further evidence and arguments throughout any of the later stages of this proceeding. This includes hearings or meetings, which CCCMC may request in the due course of the proceeding. CCCMC also reserves its right to submit comments on the TRA’s Statement of Essential Facts (SEF) once it becomes available.

2. LAWFULNESS AND VALIDITY OF MEASURES AND TRANSITION REVIEW

2.1. The continuation of EU measures in the UK following Brexit is unlawful under the WTO ADA

- [8] As set forth in the WTO ADA, an anti-dumping measure shall be applied only under the circumstances provided for the ADA. As such, Article 3.1 of the ADA clearly stipulates that:

“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both

(a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.”⁴

- [9] In the case at hand, it is entirely clear that the UK has not applied measures on the basis of a domestic investigation. Instead, the currently applicable measures in the UK are applied on the basis of an (old) investigation conducted by the European Commission, which was based on the EU basic Anti-dumping Regulation.
- [10] CCCMC also points out that the existing anti-dumping measure was not only imposed by the European Commission as investigating authority (as opposed to the TRA), it was also based on the EU concept such as the “Union industry” composed of 28 Member States, which at the time included the UK. This obviously means that the underlying determinations of dumping, injury, causality and public interest were all made by assessing the impact of imports on the entire EU market, as opposed to only the UK market.
- [11] Following Brexit, the UK has decided to continue the application of certain EU trade remedy measures in its domestic legal order by way of national laws.⁵ CCCMC however questions the legality of this rollover mechanism under international law. As the UK has withdrawn from the EU legal order, there cannot be a situation of legal continuation. In other words, the UK cannot be regarded as a legal successor to the EU under international agreements, thereby acquiring its rights and obligations or legal status under any international agreement.
- [12] The point above can be best illustrated by pointing to the agreement that the UK itself had to enter into its trade arrangements with the EU. As per the EU-UK Trade and Cooperation Agreement of 30 April 2021, the UK had to enter into a new international agreement with the EU to govern trade aspects of its relationship with the EU following Brexit. Given that the UK itself had to enter into a new agreement in relation to its trade policy vis-à-vis the EU, it is incomprehensible how its trade policy vis-à-vis third countries could continue to be governed on the basis of EU policy, which were simply taken over by the UK following Brexit.
- [13] In CCCMC’s view, the UK was simply not entitled to continue applying EU measures in its domestic legal order following the Brexit. This is acknowledged in the EU’s own publication of 18 January 2021, where it stated that:

⁴ Article 3.1 of the WTO ADA. See also Article 5 of the WTO ADA specifying the conditions which must be met by such investigation. CCCMC maintains that, since the UK authorities have never conducted a separate and independent investigation, these conditions have not been met. In other words, the current transition review is based on an underlying EU market investigation, not one that was limited to the UK market specifically.

⁵ See the European Union (Withdrawal) Act 2018, European Union (Withdrawal) Act 2019, as well as the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (the “Regulations”).

*“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.”*⁶

- [14] The fact that an alternative route, which seems more appropriate under UK and international law, in fact possible, is evidenced by another investigation conducted by the TRA. On 21 June 2021, the first UK anti-dumping investigation was initiated concerning imports of aluminium extrusions from China.⁷ A provisional determination was published by the TRA on 17 August 2022.⁸ As opposed to other proceedings, this is not a follow-on investigation of measures adopted at EU level, despite the fact that the EU launched its investigation and adopted provisional measures prior to Brexit.⁹ Subsequent to the aluminium extrusion investigation, UK also initiated its own parallel anti-dumping and anti-subsidy investigations on single-mode optical fiber cables from China.¹⁰ Thus, in terms of both aluminium extrusions and single-mode optical fiber cables, although there are measures in the EU, the TRA chose to initiate UK’s own investigation rather than rolling over the EU measures.
- [15] Given that the same investigating authority, the TRA has already proven that another route, which appears to be more consistent and valid under the principles of international and UK domestic law, the TRA is requested to consider applying the same as regards the current transition review investigation on ceramic tiles, which should be conducted under the applicable UK legal regime, and a new investigation (instead of a transition review) should be launched with the parameters set out therein.

⁶ Notice of 18 January 2021 regarding the application of anti-dumping and anti-subsidy measures in force in the Union following the withdrawal of the United Kingdom and the possibility of a review (OJ C18, 18.1.2021, 41).

⁷ See the notice of *“TRA opens first case in response to application from UK industry, the TRA will investigate whether aluminium extrusions are being dumped in the UK by businesses in the People’s Republic of China*, at <https://www.gov.uk/government/news/tra-opens-first-case-in-response-to-application-from-uk-industry>.

⁸ See *Provisional Affirmative Determination in Aluminium Extrusions Imported into the United Kingdom from the People’s Republic of China, Provisional affirmative determination in a dumping investigation and a recommendation to require a guarantee* (Investigation No. AD0012), at <https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/3f3d3876-1284-46f0-85a2-22d0ce5d09aa/>

⁹ More specifically on 12 October 2020, see Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People’s Republic of China (OJ L. 336, 13.10.2020, p. 8).

¹⁰ See Press release: *New investigations into imports of fibre optic cables from China. The TRA has opened an anti-dumping investigation and a countervailing investigation into imports of fibre optic cables from China*. Published on 26 April 2022. <https://www.gov.uk/government/news/new-investigations-into-imports-of-fibre-optic-cables-from-china>

- [16] It logically follows that the currently applicable UK anti-dumping measures on ceramic tiles are unlawful, as they are based on the findings of a separate investigating authority (the European Commission) which the UK itself does not belong to anymore. This is strengthened by the additional fact that these findings were drawn on the basis of an investigation covering the EU industry and market, rather than the UK ones. By merely taking over these measures, the UK is currently applying trade defence instruments, the permissibility of which were assessed by investigating imports' impact on the EU, not the UK domestic industry and market. As such, the continuation of these measures by the UK is not in line with the requirements set out by the WTO ADA.

2.2. The UK transitional review is invalid under the WTO ADA

- [17] In CCCMC's view, not only are the currently applied measures in the UK invalid because they have been taken over from existing EU measures rather than based on an independent assessment taking into account the UK domestic industry and market, but also, the unlawfulness extends to the initiated transition review in itself.

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

"The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review [...]"¹¹

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

2.3. Conclusion on the validity of UK measures and transition review

¹¹ See Article 11.2 of the WTO ADA.

- [20] In view of the above, i.e. the conclusion that both the continued imposition of EU measures in the UK following Brexit, and the attempt to legalize this situation by conducting a UK transition review of these measures are unlawful under the WTO ADA, CCCMC is of the view that the UK can only remedy the situation by immediate revocation of the measures.
- [21] To be clear, as a WTO member, the UK is of course entitled to launch an investigation into the impact of any imports onto its domestic industry and market. It has the right, as every other WTO member, to protect the domestic market under the conditions set out in the WTO ADA. However, this does not entitle the UK to impose measures on the basis of an investigation which was not conducted vis-à-vis the UK domestic industry or market, or on the basis of a review of such measures applied to the UK domestic industry or market.
- [22] In view of the above, CCCMC respectfully requests the TRA to regularize this unlawful situation by terminating the currently applicable measures, as well as the transition review.

3. SUBSTANTIVE COMMENTS IN RELATION TO THE TRANSITION REVIEW

3.1. Comments on injury and threat thereof

- [23] Pursuant to Regulation 99A of the Regulations, the objective of the transition review is to identify whether (i) dumping of the goods or the importation of the goods subject to review would be likely to continue or recur if the anti-dumping amount or countervailing amount were no longer applied to those goods; and (ii) injury to a UK industry in the goods would be likely to continue or recur if the anti-dumping or countervailing amount were no longer applied to those goods.
- [24] In this section, CCCMC will provide comments as to why it considers that these requirements are not met substantively. It should be noted that these comments should not in any way be interpreted as any implication on CCCMC's side in relation to the unlawfulness of the measures. In other words, whereas CCCMC remains convinced of the unlawfulness of the measures, it still will provide its view as to why, even if the measures were to be considered lawful, their continuation should still be rejected on substantive grounds.
- [25] In this respect, it should be kept in mind that the initial investigation was conducted by the European Commission in view of the Union industry and the EU-28 market, not the UK one. Accordingly, the EU determination cannot automatically be

applied to the UK market. Indeed, any conclusion of the initial investigation applied only to the Union industry and EU market.

- [26] In this regard, the discrepancy between the underlying EU investigation and the scope of the UK's transition review becomes immediately clear. As set out in the pre-sampling questionnaires of a certain UK importer,¹² it is clear that there are no UK producers of porcelain class B1A under EN 11441, one of the goods subject to the UK's transition review.
- [27] Given the above, which already highlights the practical implications of the problematic situation caused by an EU-28-wide investigation, followed by a UK-specific transition review, the TRA is requested at the very least to exclude any products which are not or insufficiently produced in the UK from the scope of its transition review, should it be of the view that the current transition review can continue, which CCCMC strongly disputes. A more preferable way forward would indeed be to open a separate UK domestic investigation and therefore re-define a correct product scope thereunder.
- [28] This analysis is further strengthened by the fact that China is about to impose far-reaching environmental regulations, which will decrease Chinese production of the goods subject to the transition review, thereby decreasing imports of those goods which are in fact also produced in the UK. What is important to highlight is that those regulations are merely environmental ones which are used for general welfare of the society. Therefore, reference to those regulations must not be linked to any allegation on a "particular market situation".
- [29] At a macroeconomic level, the implementation of Chinese government's "carbon peaking and carbon neutrality" goals and other stricter environmental protection objectives have led to policies published by central government and local authorities that reduced the production of ceramic tiles. Such reduction in production was expected to be of lasting nature.
- [30] On May 13, 2021, the National Development and Reform Commission of China issued the *Guidance Opinion about the Improvement of High Consumption & High Emission Control*, which listed 6 industries as "High Consumption & High Emission" industries, encompassing the construction material industry. The ceramic tile industry was thus included as a major component of construction materials. In the *High Emission Industry Energy Efficiency Standards and Benchmarks (2021 Version)*, the document specified the energy efficiency standards to be applied to the manufacturing of architectural ceramics and sanitary wares, while setting out stricter standards for energy consumption. For companies

¹² See UK Importer's pre-sampling questionnaire response of Shackerley (Holdings) Group Limited.

in these industries that cannot meet the energy efficiency standard within the time limit, their factories will be shut down accordingly.

- [31] Local authorities in Guangdong, Guangxi, Jiangxi, Shanxi and Shaanxi had also published policies to shut down outdated production capacity and increase the energy consumption efficiency, which goals were expected to be achieved by the end of 2025. The production of ceramic tiles in the above five provinces (Guangdong, Guangxi, Jiangxi, Shanxi and Shaanxi) accounted for about 46% of the total production capacity of China's ceramic tiles in 2020¹³.
- [32] According to a report published by the China Building Ceramic & Sanitaryware Association and *Ceramic Information*, by the end of 2020, there were 1,155 ceramic factories and 2,760 production lines in China in total, and the average natural gas usage rate of different ceramic production regions was about 53%.¹⁴ The change in fuel from coal to natural gas was to follow the policy issued by local authorities. Only in 2020, over 800 production lines in Guangdong Province completed their change in fuel, which represented 29% of the total production lines in China. The high cost of natural gas with its unstable and sometimes inadequate supply in China has resulted in the above 29% of the production capacity of architectural ceramic shrinking. For the rest, approximately 47% of ceramic companies that has not yet completed the shift from coal to natural gas, their factories might be shut down according to policies published by their local authorities. Thus, in the future, without extraordinary events, the decreasing trend of ceramic tiles production would remain.
- [33] As to raw materials, ceramic industry suffered from the rising costs of natural gas, coal, stone, pigment, and glaze. Natural gas prices have remained at a historical high point ever since the start of 2022. On June 6, 2022, the average cost of LNG natural gas was 1.9 CNY/m³ higher than the corresponding period last year, which revealed a 60% rise in the cost of natural gas.¹⁵ Combined with the policy of the mandatory shift from coal to natural gas, it can be expected that the ceramic tiles production in China will continue to decline for now and in the future.

3.2. UK Economic Interest Test

- [34] Pursuant to Regulation 100A(2)(a) of the Regulations, anti-dumping measures may only be applied if the UK economic interest test is met.

¹³ See figures available at:

<https://baijiahao.baidu.com/s?id=1688852757264139221&wfr=spider&for=pc>.

¹⁴ See figures available at: <http://news.bandao.cn/a/509556.html>.

¹⁵ See figures available at: <https://www.chinaceram.cn/news/170697.html>.

- [35] CCCMC requests that TRA take into account the interests of UK importers and users of the goods. As such, CCCMC points out that during a time of economic stress and rising prices, it is crucial to secure reliable and cost-effective sources of supply of goods, including from abroad as to ensure that the domestic economy does not overheat. In this regard, it is noteworthy that the UK government is already indicating that consumer price inflation for the UK rose another 1.6% in October 2022 alone, and currently stands at 9.6% year-over-year.¹⁶
- [36] To ensure that inflationary pressure is not added to by measures on foreign goods which remain at a stable cost, CCCMC recommends the termination of the current transition review. In this regard, CCCMC notes that its price stability is not in itself any evidence or indication of dumping practices, but merely caused by the fact that energy prices outside the UK and the EU have not been subject to sudden increases, which means that production costs have remained stable.

4. CONCLUSION

- [37] In this submission, CCCMC has first set out its views on the legality of measures and the transition review, which it considers manifestly unlawful. The only possible way for the UK to remedy this situation is to abandon the measures which have originated at the EU level and start over with its own investigation.
- [38] Additionally and separate from the issue of legality, CCCMC has shown the various problems relating to the incongruous overlap between the two product scopes, which is an important element in the injury analysis. In addition, stricter environmental regulations in China will lead to decreasing production of ceramic tiles in China, as well as decreasing imports of those goods to the UK.
- [39] Finally, CCCMC has shown that continuing the anti-dumping measures would not at all be in the UK's broader economic interest.
- [40] For all the reasons set out above in this submission, CCCMC believes that the termination of the current investigation is warranted. CCCMC reserves its legal right to make further comments at a later stage of this proceeding.

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See figures available at:

<https://www.ons.gov.uk/economy/inflationandpriceindices#:~:text=Consumer%20price%20inflation%2C%20UK%3A%20October%202022&text=The%20Consumer%20Prices%20Index%20including,from%208.8%25%20in%20September%202022.>