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MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
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Non-Confidential

**The Comments on the Particular Market Situation in China's Ceramic Tiles
Market regarding the Transition Review TD0027
Submission of the GOC**

The Notification of PMS enquiry dated on 12 December 2022 by Trade Remedies Authority (TRA) requested the Ministry of Commerce of the People's Republic of China (GOC) to comment or provide information on whether a particular market situation (PMS) exists in China's Ceramic Tiles market. It is appreciated that TRA gave GOC this opportunity to comment or provide information regarding to this investigation. In order to promote the fair and just settlement of the transition review concerning Ceramic Tiles products originating in China (transition review TD0027). The GOC would like to submit the following comments.

1. The position on maintenance or application of the EU trade remedy measures (the EU measures) and transition reviews.

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

The very act of exit from the EU by the UK released the UK from all its rights and obligations as a former member state. The maintenance or application of the EU measures by the UK lacks legal basis. The EU's Notice clearly states that "all anti-dumping and anti-subsidy measures in force apply from 1 January 2021 only to imports into the twenty-seven Member States of the European Union". There is no international law or WTO rules authorizing the UK to maintain or apply the EU measures. The maintenance or application of the EU measures by the UK also lacks factual basis. The continued application of the EU measures without WTO-compliant investigation is inconsistent with WTO rules.

1.2 The transition review are inconsistent with the WTO rules.

the UK is not entitled to maintain and continue to apply the EU measures after Brexit. The transition reviews are invalid from the beginning. The transition review is not an investigation procedure under the WTO rules. The Call for Evidence and the initiation of the transition review lacks transparency.

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

2.1 Expansive interpretation of PMS does not comply with ADA.

In accordance with the Anti-Dumping Agreement (ADA), the scope of PMS investigation should be directed to its purpose, that is PMS should have a direct impact on the domestic sales price of the relevant products, thus affecting the proper comparison between domestic sales prices and export prices. The multilateral trading system is based on the respect for the variants of economic governance forms and the governments systems. WTO rules are formulated on the basis of respect for the development models of countries. Different economies are at different development stages and have their own economic characteristics. If the anti-dumping measures are extended to the evaluation of national systems and policies, and attribute competitiveness arising from the macro-political conditions and development environment to enterprises, such an extended scope of investigation would neither directly support the finding of a PMS nor be consistent with ADA.

2.2 The allegation on PMS in China's Ceramic Tiles market is general, not supported by any evidence.

Although the terms of PMS and situations of PMS are stipulated in the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, in public documents of Transition Review TD0027, the British Ceramic Confederation claimed that a PMS exists in China's Ceramic Tiles market in a few words, which is only an ambiguous and general allegation. The British Ceramic Tiles Confederation cannot simply assert that China is a non-market economy. As we all know, the WTO rules do not clearly define the concept of non-market economy countries. According to Article 2.2 of ADA, *When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country.....* British Ceramic Confederation did not submit reliable evidence regarding on the existence of state intervention in the China's Ceramic Tiles market, the existence of distortion and artificial low prices in China's Ceramic Tiles market. According to Article 5 of ADA, *Simple assertion, unsubstantiated by relevant evidence, can not been considered sufficient to meet the requirement of the application.* If the UK interested parties claim that a PMS exists in the China's Ceramic Tiles market, they should provide relevant sufficient evidences. Instead of TRA asking the GOC to provide contrary evidence or information to prove that there is no PMS in China's Ceramic Tiles against their simple assertion. Therefore, the British domestic industry or interested parties failed to fulfill the burden of proof, and conducting the investigation on this basis is a typical inversion of the burden of proof, which is inconsistent with the relevant provisions of ADA.

3. No PMS exists in the China's Ceramic Tiles market.

The Article 7(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit)

Regulations 2019 stipulates that a “particular market situation” includes situations where—(1) prices are artificially low; (2) there is significant barter trade; (3) prices reflect non-commercial factors. The GOC has assessed that the above situations do not exist in the China’s Ceramic Tiles market.

3.1 All types of Chinese Ceramic Tiles enterprises are equal competitors in the market.

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

According to the data published by the China Building Ceramic & Sanitaryware Association, in 2021, the number of construction Ceramic Tiles enterprises above the designated size (industrial enterprises with main business income of more than 20 million yuan) in China were 1048, most of which are private enterprises, scattering in Guangdong, Jiangxi, Fujian, Sichuan, Guangxi and other provinces. Most of Ceramic Tiles industry’s upstream raw material production and supply enterprises are also private enterprises. The China’s Ceramic Tiles industry is characterised by full competition with low industry concentration. Chinese ceramic tile enterprises are market-oriented enterprises, and their production and sales are aimed at gaining profits. Affected by the increase in raw material costs and other factors, 45 Chinese construction ceramic enterprises above designated size withdrew from the market in 2021, compared with 2020. In this fully competitive market environment, no enterprise can gain market advantage through dumping.

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

The primary purpose of China's five-year plan is to provide a framework guidance for economic and social development during the plan period. The plan is not self-executing and the government does not interfere with business operations and pricing practices accordingly, which should not be considered to be government intervention. Five-year plan may be used by commercial enterprises to anticipate the direction of the economy and economic development so as to make informed investments according to the anticipated direction. It can be seen that the GOC has not intervened in the development of the Ceramic Tiles industry in its planning. China’s Ceramic Tiles industry is characterised by a high degree of marketization, enterprises are free to enter or exit the market, and are responsible for their own profits and losses in a full competition bussiness environment.

3.3 The prices in China’s Ceramic Tiles market are determined by the market force.

China's Ceramic Tiles market is a fully competitive market. The domestic sale prices and export prices of China’s Ceramic Tiles are determined by market factors. The GOC does not intervene in or control the sale practices and sale prices of the Ceramic Tiles. The production and sale decisions of various types of enterprises are entirely determined by market factors. There is no evidence that the prices of Chinese Ceramic Tiles products are artificially low.

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. Thus, there is no evidence that the prices of raw materials of Chinese Ceramic Tiles products are artificially low.

3.4 No barter trade in China's Ceramic Tiles market.

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

3.5 The wrong conclusions of the third party are neither facts nor evidence.

The GOC and relevant enterprises do not accept the European Commission's Commission Staff Working Document and the findings conducted by investigation authorities of Canada, Australia and United States. The GOC and relevant enterprises had submitted their defense comments to the above-mentioned institutions. For example, regarding Commission Staff Working Document, the GOC stated that Article 2(6a) of the Basic Regulation is not consistent with Article 2.2 and 2.2.1.1 of the ADA and decisions of the Appellate Body and panel of the WTO dispute settlement mechanism on relevant issues. The content of Commission Staff Working Document and the ways it is used have serious factual and legal flaws, the investigation based on this should be invalid from the beginning.

As set out in the WTO Appellate Body’s ruling in *US – Definitive Antidumping and Countervailing Duties on Certain Products from China*¹:

*“In our view, merely incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation”.*²

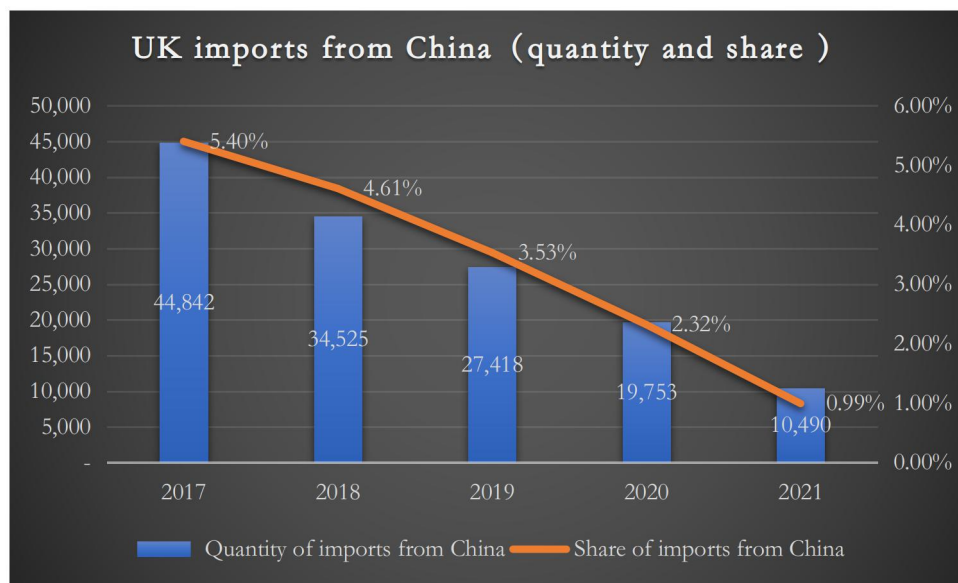
TRA should maintain its independence. The report from the third party or the wrong conclusion of other investigation authorities should not become the basic facts on which the TRA investigation conclusion is based. Under the Article 1 of ADA, *an*

¹ WTO Appellate Body, 11 March 2011, WT/DS379/AB/R.

² *US – Anti-Dumping and Countervailing Duties (China)*, Appellate Body Report, para 354.

anti-dumping measures shall be applied only pursuant to investigations initiated and conducted in accordance with the provisions of this agreement. The conclusions or findings mentioned by the UK interested are the investigation conclusions or working document of other investigation authorities, they are not objective facts, nor can they be used as the basic evidences for the findings made by the investigation authority of another sovereign country. As an independent investigation authority, TRA shall make a decision based on the objective facts obtained from its own investigation and take relevant measures accordingly.

4. The products under investigation imported from China did not cause injury to the UK industry.



Source: UK Customs Service data

According to the Table above, during the injury investigation period, the proportion of the imports of the Ceramic Tiles from China to the total imports of the UK has declined year by year. In 2020 and 2021, the proportion has not exceeded 3% for two consecutive years, and even less than 1% in 2021. According to Article 5.8 of the ADA, the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3% of the imports of the like product in the importing Member. Negligible volume of Ceramic Tiles imported from China cannot cause injury to UK domestic Ceramic Tiles industry.

5. It is not in the UK’s interest to continue to apply the Ceramic Tiles anti-dumping measures.

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

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. It is in UK's interest to terminate the current transition review.

6. Conclusion.

The maintenance or application of the EU measures by the UK lacks factual basis. The relevant transition reviews are invalid from the beginning. The UK shall terminate the application of the EU measures and all the on-going transition reviews. The scope of PMS investigation conducted by TRA shall comply with WTO rules. China has established a market economy in which the market force plays a decisive role in resource allocation. All kinds of enterprises are equal subjects in market competition. The GOC opposes discrimination based on the ownership of Chinese enterprises. There are no signs of PMS under the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 in China's Ceramic Tiles market. All types of Chinese Ceramic Tiles producers operate independently according to the price signal. The GOC has not intervened in the production, operation and pricing of these enterprises. The five-year plan does not belong to the government's intervention in enterprises. China's Ceramic Tiles market is fully competitive, and the price is determined by the market force. The imports of the Ceramic Tiles from China to the total imports of the UK has declined year by year. Negligible volume of Ceramic Tiles imported from China cannot cause injury to UK domestic Ceramic Tiles industry. The UK economy is under great inflationary pressure, continuing to apply the Ceramic Tiles anti-dumping measures is not to the benefit of the importer, nor the consumer and nor even the domestic producer, which is not in the UK's interest. Therefore TRA shall terminate the current investigation and revoke the relevant measures accordingly.