

FINNING UK LTD

SUBMISSION TO THE TRADE REMEDIES AUTHORITY

3 JANUARY 2025

INVESTIGATION No. AD0047 – CERTAIN EXCAVATORS FROM CHINA

**COMMENTS OF FINNING UK LTD ON
THE PROVISIONAL AFFIRMATIVE DETERMINATION**

NON-CONFIDENTIAL

CONTEXT

1. This submission is made by Finning UK Ltd (**Finning UK**) in response to the Provisional Affirmative Determination (**PAD**) published by the Trade Remedies Authority (**TRA**) on the public file on 20 December 2024.
2. On the same day, the Secretary of State for Business and Trade accepted the TRA's recommendation in the PAD to require all importers of relevant goods¹ (**Relevant Goods**) to give a guarantee in respect of the estimated anti-dumping duty (**ADD**) applicable to their imports, for a period of 6 months from 21 December 2024, or until a definitive remedy is implemented if earlier.
3. Caterpillar Xuzhou Ltd (**CXL**) is a producer and exporter of in-scope excavators originating in China. When exporting these goods to the UK, CXL sells them to an affiliated company located in Switzerland, Caterpillar SARL, which in turn re-sells them to Finning UK, which acts as an exclusive importer and re-seller to end-users in the UK.
4. Finning UK is the independently owned authorised Caterpillar dealer for the UK. The distribution and servicing of Caterpillar products account for the major portion of Finning UK's operations. Approximately *[the exact percentage has been deleted for reasons of commercial sensitivity]* of Finning UK's revenue derives from sales and servicing of CAT products, and *[the exact percentage has been deleted for reasons of commercial sensitivity]* derives from sales of new Caterpillar-manufactured construction equipment. Finning UK has 1,468 employees working at nineteen branches across England and Wales, Scotland and Northern Ireland.
5. The submission follows Finning UK's comments on the Statement of Essential Facts (**SEF**), submitted to the TRA on 16 December 2024, and those of CXL, dated the same day, which Finning UK supports. Finning UK's submissions contain, inter alia, verifiable information on whether CXL in-scope excavators should be considered like products, and whether they were dumped in the UK during the Period of Investigation (**POI**), July 2022 – June 2023.

¹ Goods originating from China that fall under commodity code 8429 5210 00 with an operating weight of between 11 - 80 tonnes.

COMMENT

6. Neither Finning UK nor CXL were referenced in the original complaint.
7. Consequently, neither Finning UK nor CXL were notified of the investigation; nor were they sampled or otherwise invited to contribute evidence as interested parties.
8. CXL has provided verifiable evidence that its exports of in-scope excavators during the POI amounted to *[the exact figure has been deleted for reasons of commercial sensitivity]* units with a weight of *[the exact figure has been deleted for reasons of commercial sensitivity]* tonnes. Based on the total volume of imports from China in the POI of 15,958 tonnes, imports of in-scope excavators manufactured by CXL constitute *[the exact percentage has been deleted for reasons of commercial sensitivity]* of the total volume of imports during the POI. This makes CXL by far the largest Chinese exporting producer, and Finning UK by far the largest UK importer, of in-scope excavators during the POI.
9. Finning UK has provided verifiable evidence that CXL's in-scope excavators were priced *[commercially sensitive data: non-confidential range: 0-120 %]* above JCB's Relevant Goods in the UK market during the POI. They could not, therefore, rationally be considered to have undercut or suppressed sales of the complainant's excavators.
10. The evidence submitted by CXL and Finning UK on 16 December 2024 was not explicitly taken into account or otherwise referenced in the PAD, published four days after those submissions.
11. It follows that the provisional affirmative determinations and measures in the PAD have been made in the absence of an assessment of *[the exact percentage has been deleted for reasons of commercial sensitivity]* of the total volume of imports of in-scope excavators from China during the POI. Manifestly, this omission renders those provisional determinations and measures deficient.
12. On the basis that:
 - a. the TRA is statutorily required to determine an injury margin which it is satisfied is necessary to prevent injury to the UK industry;
 - b. the default method to calculate the injury margin for an exporter is on the basis of its underselling margin (i.e., comparing a benchmark UK price with the import price) for each PCN; and
 - c. the in-scope excavators manufactured by CXL in China and imported by Finning UK into the UK during the POI were not undersold and, therefore, could not have contributed to any injury to the UK industry in any of the PCNs,

Finning UK respectfully submits that it would be contrary to the objectives of the UK trade remedies framework, and also unlawful², to make a final determination on the residual ADD rate for Relevant Goods imported into the UK, without further investigating the verifiable information supplied by Finning UK and CXL on 16 December 2024 and in this submission. Nor do we consider that this is the TRA's intention.

REQUEST

13. Should the TRA disagree with Finning UK's conclusion that the in-scope excavators manufactured by CXL are not like products with either excavators manufactured across the S-XL PCNs by the UK industry or the sampled China manufacturing exporters, we request that, as permitted by Regulation 40 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019, the TRA:

- a. registers Finning UK as an interested party; and
- b. samples Finning UK, providing a reasonable deadline for us to provide a questionnaire response,

in order for the impact of the proposed provisional measures to be adequately assessed on CXL Relevant Goods.

14. We ask that this takes place as soon as possible. Finning UK's supply of in-scope CXL excavators to our customers would be subject to delays and disruptions should the provisional residual anti-dumping measures be confirmed. [*commercially sensitive data: non-confidential range: 90-150*] excavators for delivery to Finning UK in the first half of 2025 have already been sold on to UK end-users. We are also importing a further circa [*commercially sensitive data: non-confidential range: 130-180*] CXL in-scope excavators for stock and to fulfil further sales completed in Q1 and Q2.

15. We look forward to cooperating with the TRA in the near future to ensure that a fair final determination for CXL in-scope excavators is reached.

² Paragraph 3 of Annex II of the WTO Antidumping Agreement, as given effect in UK legislation, requires all verifiable information to be taken into account when dumping determinations are made.