

Comments by Caterpillar (Xuzhou) Ltd. on the Provisional Affirmative Determination

Investigation No. AD0047 - Dumping investigation into certain excavators imported into the United Kingdom from the People's Republic of China

On 20 December 2024, the Trade Remedies Authority (“TRA”) published a provisional affirmative determination (“**PAD**”) and recommendation to require a guarantee in the investigation No. AD0047 pursuant to paragraphs 11(3) and 13(3)(a) and 13(8A) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 (“**the Act**”). On the same date, the Secretary of State for Business and Trade accepted TRA’s recommendation and gave effect to it under paragraph 15(5) of the Act by applying a provisional anti-dumping duty on certain excavators originating from the People’s Republic of China (“**China**”).

Caterpillar (Xuzhou) Ltd. (“CXL”) is a producer and exporter of the relevant goods originating in China. In its comments dated 16 December 2024 on the Statement of Essential Facts (“**SEF**”), CXL demonstrated that conditions for the application of antidumping measures were not met since the complaint and by extension the SEF failed to consider for the purpose of relevant determinations imports of Cat-branded excavators manufactured by CXL. Based on the price analysis performed by CXL, prices by unaffiliated, independently-owned, dealer Finning (UK) Ltd. of Cat-branded excavators do not undercut, undersell or suppress prices of the complainant. On that basis, and since CXL exports amounted to [**Confidential**] of the total volume of imports of relevant goods into the UK, in the period of investigation (“**POI**”) Chinese imports overall did not undercut, undersell or suppress prices of the UK industry and thus imports from China did not cause material injury to the UK industry.

Furthermore, CXL was not notified about the initiation of the investigation. Given the magnitude of CXL exports of relevant goods to the UK and the impact of such sales on the SEF conclusions on the existence of material injury caused by imports from China, in its comments CXL also requested the TRA to exercise its discretion under regulation 40 of the of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (“**Regulations**”) to register CXL and accept its sampling form as well as to sample CXL and to set a reasonable deadline for CXL to provide a questionnaire response.

By means of these comments on the PAD - that incorporate by reference its comments on the SEF, - CXL reiterates its request for the inclusion into the sample of the Chinese exporting producers and for the receipt of a questionnaire for exporting producers under regulation 54(6) of the Regulations. Such request is not precluded by regulation 54(7) of the Regulations since the TRA is planning to revise the SEF, in particular on the account of a determination of the volume of relevant goods originating in China,¹ and thus to issue a new SEF, as TRA is in fact required under regulation 60(2) of the Regulations. Furthermore, under paragraph 11(4) of the Act the TRA is under an obligation to give to interested parties such as CXL an adequate opportunity to provide information regarding the investigation before TRA can make a final determination.

In the alternative, to the extent that the TRA denies CXL’s request for the inclusion into the sample and thus for an individual antidumping duty and to the extent that TRA makes a positive final determination and recommends imposition of definitive antidumping duties, CXL requests that the scope of definitive antidumping duties should be brought in line with the scope of the TRA’s dumping and injury determinations. Namely, definitive antidumping duties should be applied solely to the relevant goods *dispatched* from China, but not to the relevant goods *originating* in China:

¹ Paragraph 337 of the PAD appears to suggest that the TRA will be issuing a new SEF with a correct determination of the volume of Chinese imports based on their origin as opposed to the country of dispatch: “*The TRA is currently assessing whether further information from HMRC can be obtained which would allow further analysis of imports based on country of origin. Any additional relevant information obtained will be considered in the SEF and will be included in the TRA’s final determination.*”

- TRA is under an obligation to objectively examine trends in imports of relevant goods from China and third countries as part of an overarching obligation to objectively examine positive evidence regarding the existence of material injury to the UK industry and the causal link between such injury and targeted imports.
- Table 9 of the PAD analyses developments in imports of relevant goods from China based on “HMRC import data”. Pursuant to paragraph 336 of the PAD HMRC data is “*based on country of dispatch ... rather than country of origin*”.²
- That being the case, conclusions on the existence of injury in Sections H.1.4 and H.3 of the PAD and in particular in paragraph 481 of the PAD as well as the conclusion on the existence of a causal link in Section H.2 of the PAD all rest on the existence of an increased imports from China and on their magnitude based on the volume of imports *dispatched* from China and not based on the volume of imports *originating* from China.
- Moreover, in Section H.2 and in particular in paragraph 479 the PAD determines that imports of relevant goods *dispatched* from Japan, Belgium and the Netherlands, do not injure the UK industry and thus should not be subject to any antidumping duties.

On that basis, and since the scope of antidumping duties should mirror the scope of the dumping, injury and causality findings, provisional as well as definitive antidumping duties, if any, shall apply only to the relevant goods *dispatched* from China as opposed to relevant goods dispatched from other countries, regardless as to whether they originate in China or not.

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² Paragraph 336 of the PAD states the following: “*HMRC import data being based on country of dispatch (in line with international best practice on the compilation of National Accounts) rather than country of origin*”.