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Certain excavators from China

Anti-Dumping Investigation

Response to Statement of Essential Facts

On Behalf of:

LiuGong Machinery (UK) Limited

LiuGong Changzhou Machinery Co., Ltd.

Liuzhou LiuGong Excavator Co., Ltd.

Guangxi LiuGong Machinery Co., Ltd.,

LiuGong Machinery Hong Kong Co Limited

21 February 2025

NON-CONFIDENTIAL

On behalf of Liuzhou LiuGong Excavator Co., Ltd., LiuGong Changzhou Machinery Co., Ltd., two affiliated Chinese producers of the goods concerned, Guangxi LiuGong Machinery Co., Ltd., LiuGong Machinery Hongkong Co., Limited, the affiliated exporters, LiuGong Machinery (UK) Limited, the affiliated importer, (hereinafter collectively referred to as “LiuGong Group”), we hereby provide further comments on Statement of Essential Facts (SEF) issued by the Trade Remedies Authority (TRA) on November 25, 2024.

1. This further submission is made in accordance with SEF paragraph 7, are supplemental to the submissions previously made on behalf of LiuGong Group and were not capable of being made in accordance with paragraph 6 of the SEF. LiuGong Group asks that these further submissions are considered prior to the TRA making its final determination.

Summary:

2. The errors in the investigation process and data considered by the TRA in reaching its conclusions have fundamentally undermined those conclusions and made them unsafe. As a result the TRA should pause, reconsider and restart its investigation to include complete data prior to any recommendation to the Secretary of State for Business and Trade.

Submissions:

3. On 13 January 2025 the TRA published on the public file comments from Finning UK Limited and Caterpillar (Xuzhou) Ltd. In those comments Finning UK Limited confirmed it imported goods from PRC from Caterpillar (Xuzhou) Ltd. Both the TRA and JCB have failed to identify Finning UK Limited and Caterpillar (Xuzhou) Ltd as interested parties. As a result no sampling data has been obtained from Caterpillar (Xuzhou) Ltd despite its confirmation that it is *“by far the largest Chinese exporting producer”*.

4. LiuGong Group has already highlighted concerns in the data analysed by the TRA to reach its conclusions, and in particular the failure to obtain data from more than one UK manufacturer and the failure to consider complete and accurate data from HMRC in relation

to imports (due to including goods which were not within scope and incomplete data for the year). The failure to consider the company that confirm they are the largest manufacturer of in scope Goods imported into the UK from PRC (although LiuGong Group cannot verify such claim, the TRA may through the confidential submission) compounds the unsafe conclusions reached by the TRA and undermines the entire process and recommendations.

5. In order to make a recommendation the TRA is required to consider whether there is evidence of imported goods at export prices less than the normal value in the exporter's country causing material injury. With respect, it is not possible to meet any of that function if that exercise does not include the price of imported goods from the largest manufacturer and the price of sale by the UK market as a whole, and then perform a comparison between the price of the imported goods and those of the UK industry with all of the data available.

6. In particular the conclusions drawn in section G of the SEF does not bear scrutiny in light of the omission of Caterpillar (Xuzhou) Ltd as a PRC exporter. In accordance with Regulation 27(2) it is not possible to identify whether there is injury or whether dumped goods have caused that injury without considering data from the largest exporter. Caterpillar (Xuzhou) Ltd state that their own analysis identifies that there is no injury, LiuGong Group cannot verify such claim, TRA however, have a statutory duty to verify it.

7. Regulation 30¹ requires the TRA to consider:

- a) the volume of the dumped goods during the injury period;
- b) the effect of the dumped goods on prices of the like goods in the UK market during the injury period;
- c) the consequent impact of the dumped goods on UK industry during the injury period;
- d) any other factors it considers relevant.

8. Without carrying out sampling of Caterpillar (Xuzhou) Ltd the TRA cannot satisfy these requirements.

¹ The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019

9. There has not been an assessment of the volume of goods imported from PRC during the injury period in accordance with Regulation 17 as there has been no assessment of whether Caterpillar (Xuzhou) Ltd fall within the calculation of those goods and if so the volume of the Goods exported by them to the UK. It would appear that the TRA recognised that the Goods would be imported via other countries² and obtained data from HMRC to address this concern. The TRA identified concerns in using that data including that it was incomplete for the POI and that it contained data relating to goods which were outside of scope but could not be eliminated from the raw data. Since TRA did not identify Caterpillar (Xuzhou) Ltd as a relevant exported it is assumed that the TRA was unable to identify the imports from Caterpillar (Xuzhou) Ltd (via Caterpillar SARL) and as such the entirety of section G1.1 is incorrect.

10. It follows that in order to identify price undercutting, price depression and/or price suppression the price of the imports from Caterpillar (Xuzhou) Ltd would need to be included in those calculations in order to reach reliable conclusions. In this regard the conclusions that identify injury (which is a pre-requisite in order to recommend a tariff) at G1.2.1 and G1.2.3 are based on incomplete and inaccurate data and cannot be relied upon. It is the conclusion of both Finning UK Limited and Caterpillar (Xuzhou) Ltd that their products are actually sold at above the price of JCB products (notwithstanding that only represents part of the UK market)³.

11. Similarly, the impact of the Goods imported from PRC on domestic sales calculated at G1.3.1 now appears to lack information relating to sales from Komatsu (Table 14 stating that the calculation relates only to questionnaire responses, i.e. from JCB only) and from Caterpillar (Xuzhou) Ltd. No reliable conclusion can be drawn on the impact on UK manufactured goods from PRC imported goods where data is missing from one half of the UK industry and from what is held out to be the biggest exporter from PRC. The same is true of the market share analysis at G1.3.3.

² SEF para 318

³ Submissions of Finning UK Limited 3 January 2025 and Caterpillar (Xuzhou) Ltd undated (published 13 January 2025).

12. In short the findings of the TRA in the SEF are unreliable due to the data from UK industry, HMRC and PRC exporters being incomplete. No reliable conclusions can be drawn in such circumstances. TRA concludes that it has identified an increase in goods being imported from PRC⁴ despite not having data from *a*, if not *the*, major PRC manufacturer and also identifying a similar increase of imports from other countries (Table 25). The TRA concludes that there is evidence of price undercutting and suppression (although not depression)⁵ despite not having complete data from either UK side or PRC side. It also concludes that profits, employees, investments and productivity increased in the POI⁶ but that there was evidence of a lack of growth in the market share⁷ despite JCB confirming in their application that there had been growth in the UK market share of 12% over the injury period but that this was entirely down to Komatsu's market share (suggesting a different cause for JCB's lack of market growth)⁸. The conclusion therefore that despite a rise in profits, employees, investments and productivity the TRA could identify injury to the UK to a lack of growth of the UK market share is a conclusion that is not only inconsistent with the information provided by the applicant but not capable of further analysis due to the lack of sampling of Komatsu. The only other significant finding in relation to injury related to cash flow at JCB being negative, whilst also confirming an increase in investments this is perhaps unsurprising, but in any event the same criticism in relation to not analysing the cash flow of Komatsu can be levelled at this conclusion. The conclusions in relation to sales and output production⁹ are parasitic on the prior conclusion in relation to market share, despite JCB's confirmation that the UK market share increased by 12%.

13. Accordingly, each of the conclusions reached do not endure in light of the omission of the data from the UK and PRC manufacturers. The potential to cause catastrophic injury to the UK importers of PRC manufactured machines and their customers, including LuiGong UK Machinery Ltd and Finning UK Limited, should be approached with extreme caution by the TRA. The TRA has to consider the potential impacts in the Economic Interest Test and that

⁴ SEF para 481

⁵ SEF para 482-484

⁶ SEF para 482-487

⁷ SEF para 485

⁸ Table 8 JCB Application

⁹ SEF para 486

cannot begin to be done where the TRA only has part of the picture due to relying on incomplete and inaccurate data. None of the conclusions of the TRA can be upheld in light of this omission.

14. Whilst the opportunity to challenge findings may exist in seeking reconsideration or judicial review it may be too late given the levels of tariffs initially recommended in the SEF. LiuGong Group therefore urge the TRA to sample Caterpillar (Xuzhou) Ltd and Finning UK Limited and thereafter provide a further SEF which will include complete HMRC data. Further effort ought also to be made to consider the entire UK market not only a single manufacturer. Further submissions should then be sought based upon the updated SEF. For the avoidance of doubt the TRA has the power to take these steps in accordance with Regulation 40 and is required to take those steps in order to provide an investigation which is compliant with the Regulations and to reach sound conclusions.