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AD0047

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

17 April 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 Addendum to Statement of Essential Facts (the "Addendum") issued by the Trade Remedies Authority ("TRA") on 10 April 2025.

1. This further submission is made in accordance with the Addendum paragraph 6 and is supplemental to the submissions previously made on behalf of LiuGong Group.

Summary:

2. The Addendum creates disparity between sampled exporters which places LiuGong Group (and Sany) at a disadvantage.

3. The Addendum fails to give proper consideration to the test required to determine injury and economic impact.

4. The Addendum fails to consider the errors in the investigation process and data previously highlighted which fundamentally undermine the TRA's conclusions and make them unsafe.

Submissions:

5. LiuGong Group recognises the inclusion, sampling and verification of Caterpillar (Xuzhou) Ltd and Finning UK Limited. In calculating the dumping margin for Caterpillar

(Xuzhou) Ltd the TRA commented in the Addendum that "*Since the publication of the SEF, the TRA has revised its approach taken for calculating a reasonable level of profit…*" and furthermore that it had *"made changes to the dumping calculations relating to AS&G costs and profit and export price, in addition to the change detailed in Section B1.2*". This creates a scenario where one exporter has been dealt with under a different methodology to the others in the SEF (to include the Addendum) and has the opportunity to review and comment upon that methodology (complete with calculations), whilst the other sampled exporters in the SEF (including LiuGong Group) are unable to provide any comments on that methodology (which will equally be applied to them) or the resultant calculations prior to the publication of the Final Determination. This places those sampled exporters who were provided with the original methodology at a disadvantage. The TRA should address this by providing details of the methodology together with the calculation for any adjusted recommendation by a further Addendum and providing those affected with an equal time to respond as has been afforded to Caterpillar (Xuzhou) Ltd.

6. As things stand the tariff identified for LiuGong Group in the SEF is above that of the non-sampled co-operating exporters and the non-co-operating exporters. This would be highly unusual (and would not serve the public purpose of the Regulations as it would deter any co-operation from exporters in future investigations). LiuGong Group are prevented from providing any substantive comment on this apparent situation since the Addendum appears to confirm that there will be a later amendment for the relevant margins in the Final Determination. This again places LiuGong Group at a disadvantage.

7. The Addendum gives insufficient consideration and detail in respect of the determination on injury. The Addendum states only that "*The TRA's conclusions on injury, based on a holistic assessment of the [sic] all the available evidence, has not materially departed from what was set out in the SEF*". Regulation 30 requires specific consideration of:

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. In order to consider the effect on the UK market the TRA is required to consider the whole UK market. The TRA has considered only one UK manufacturer and failed to give due consideration of the confirmation that there has been an increase in market share during the POI of the UK producers. The TRA has not been able to consider the volume of dumped goods or their effect due to incomplete and inaccurate data from HMRC in relation to imports (due to including goods which were not within scope and incomplete data for the year). The TRA has now considered further data from exporters but has not set out how this has been considered and applied in accordance with Regulation 30.

9. Since there must be a material difference given the number of imported goods now considered and sampled there must be different considerations even if the conclusion reached is the same. The Addendum provides nothing of the considerations only the conclusion. There would need to be wholesale reconsideration of section G1 and in particular a review of any price undercutting, price depression and/or price suppression and market share are required in order to identify injury. Sections G1.2.1, G1.2.3, G1.3.1 and G1.3.3 ought to be considered in detail with the considerations, in light of the further information sampled, and conclusions set out in full. The TRA confirms only that there are “negative developments” in the UK market. Such a conclusion does not bare scrutiny and is not supported even by the applicant who has confirmed that the UK market share has increased over the POI, together with profits, investments, employees and productivity. Given the conclusions on injury are primarily only reached on the basis of market share (despite the application confirming there has been an

increase in market share of UK producers over the POI) this is a very significant finding which requires scrutiny from the affected PRC exporters which cannot be properly analysed on the basis of the sweeping statement within the Addendum that there is no "material" departure from the conclusions previously reached.

10. The Addendum confirms it has considered submissions from Caterpillar (Xuzhou) Ltd in respect of economic impact. There is no confirmation that the TRA has considered the economic impact on Finning UK Limited. It would appear from the wording of the Addendum that the TRA have failed to assess the economic impact on Finning UK Ltd and their suppliers and downstream customers. In the open letter from Finning UK Ltd to the TRA on 16 December 2024 they confirmed that they employed 1,468 people in 19 UK locations and generated revenue of between £75million and £130million in respect of the Relevant Goods during the period of investigation. Of those employed by Finning UK Limited a considerable number were dependant upon the imports from Caterpillar (Xuzhou) Ltd. The same letter identified a significant number of downstream customers, including the UK Government. In accordance with the Regulations the TRA are required to consider those affected, including those in vulnerable jobs at Finning Uk Limited, their customers and suppliers. The TRA will have additional responsibilities and requirements in accordance with Regulation 60A depending on the consideration given to the economic interest test and therefore this requires very careful scrutiny prior to the Final Determination. This has currently not been discharged.

11. The Addendum confirms that the TRA have reached different conclusions in respect of welfare impacts but have chosen not to publish those to allow for comments to be prepared which can be considered alongside the Final Determination. The welfare impact forms part of the essential facts and conclusions reached by the TRA. Where they differ from the SEF they should be published to allow those concerned and co-operating in the investigation to be able to prepare responses to be considered prior to the Final Determination.

12. LiuGong Group reiterates that it remains fundamentally concerned that the investigation is not in accordance with the requirements of the Regulations. The primary concerns remain:

a) The period of investigation is inappropriate based upon a historically extraordinary period of inflation;
b) Failure to consider the different characteristics of the machines sold in PRC and the UK;
c) Inclusion of battery electric excavators despite these not being produced in the UK and their data not being verified or included in the conclusions reached;
d) A failure to consider more than one UK producer (particularly where the other UK producer has not suffered injury);
e) A failure to adequately consider other factors as causing the applicant "injury";
f) Use of incomplete and inaccurate data in reaching its conclusions;
g) Determining there is a PMS;
h) Incorrectly determining there is injury;
i) Benchmarking the costs and using data only from the Applicant's sister company (despite materials being purchased and sold globally with components from PRC purchased in the UK and non-PRC components purchased in PRC);
j) Calculations based on mathematical errors and incorrect assumptions (including: adding rather than subtracting rebates; using an incorrect denominator for cost of production and AS&G expenses; applying the incorrect profit ratio; improper deductions in calculating the Net Export Value; failure to make proper adjustments including for handling costs, port fees and import duties; and making adjustments for raw material and components which are not "significant" in the manufacture of the Goods);
k) Failure to provide disclosure in respect of the benchmarking data relied upon for steel and non-steel raw material and components.

13. These issues ought to be considered prior to the Final Determination in accordance with Regulation 40 and adjustments made pursuant to Regulation 41 (where appropriate) to prevent a review under Part 7 of the Regulations and/or judicial review.