



Aaron & Partners

Solicitors

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

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NON-CONFIDENTIAL

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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 comments on Statement of Essential Facts (SEF) issued by the Trade Remedies Authority (TRA) on November 25, 2024. This submission is timely filed according to the deadline set by the TRA in the SEF.

Summary

1. There is no evidence of dumping, the evidence used is based on flawed data and makes unsupported assumptions.
2. There is no economic injury attributable to the alleged dumping of imported excavators from TRA.
3. The data relied upon by TRA is unreliable, unrepresentative of the UK market as a whole and cannot conclusively support the findings and recommendations reached.
4. Even if the TRA were to conclude there was dumping, which is denied, the calculations are incorrect based upon the data supplied/formula used.

Submissions

Period of investigation and injury period:

5. There appears to be no basis for the injury period selected, the majority of data, including the applicant's financial years are based upon calendar years. The selection of the injury period, being part way through a year, is a cynical selection requested by the application which appears to not have been scrutinised by the Trade Remedies Authority ("TRA") in the Statement of Essential Facts ("SEF") despite the request (by LuiGong Machinery (UK) Limited, "LGUK") to do so. JCB identify in their application that they have increased profits, utilisation, number of sales and production over the period of investigation¹. JCB's only real complaints is that prices have not increased as significantly as in other countries², that prices have not kept pace with inflation³ and that their market share has decreased (despite acknowledging that UK market share is up on the whole)⁴. There is no investigation referred to within the SEF regarding which of the other countries UK manufactured Goods are exported to or the economic factors within those countries which may affect them but not the UK. Further analysis of the sweeping statements made in respect of export prices of JCB manufactured Goods are required in order to verify the claim before any inferences can be drawn.

6. It is hardly surprising that costs have not kept pace with inflation, during the POI inflation was at a record high (CPI up 6.8 points)⁵ although that tailed off during the year and is a likely and cynical reason why JCB did not choose a calendar year. The evidence provided by LGUK also shows that their sales did not keep pace with inflation, a clear indicator that the issue was not PRC dumping imports. Although none of the LuiGong ("LG") entities have been

¹ Section G1 – material injury.

² Section G1 – Table 11.

³ Section G1 – subsection 11A

⁴ Section G1 – Table 8

⁵ [CPIH ANNUAL RATE 00: ALL ITEMS 2015=100 - Office for National Statistics](#)

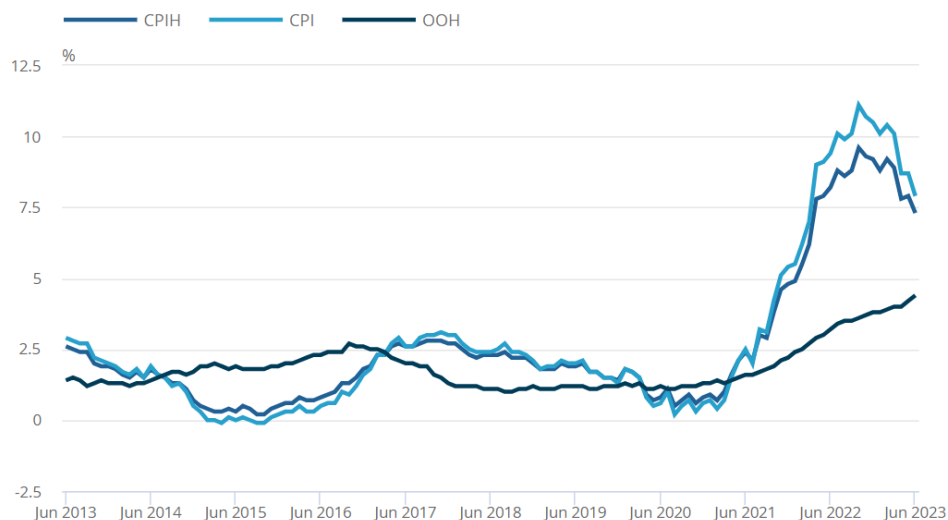
party to the other data provided it suspects that similarly the other parties (including non-UK and non-PRC) and manufacturers were also unable to raise their prices in line with the record inflation levels.

7. It is clear therefore that the selection of the period during a calendar year has distorted the figures to take advantage (from the prospect of the applicant) of the record high inflation levels.

8. The tabular evidence presented by ONS⁶ shows just how unusual and significant inflation during the period of investigation was:

Figure 1: Annual CPIH and CPI inflation rates eased between May and June 2023

CPIH, OOH component and CPI annual inflation rates for the last 10 years, UK, June 2013 to June 2023

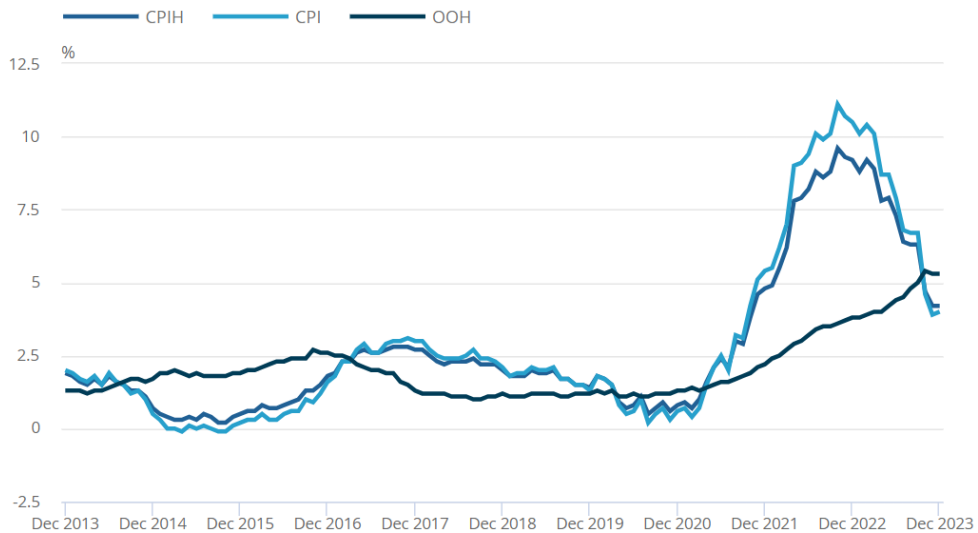


However, when reviewing the data over the calendar year one can quickly see how there is a significant decrease in inflation which not only made the period of a calendar year more representative to exclude the highly unusual inflation spike but also would reduce any injury that JCB seek to assert. It can therefore be seen that the POI is a cynical and suspicious period selected by JCB without justification and without scrutiny from TRA.

⁶ [Consumer price inflation, UK - Office for National Statistics](#)

Figure 1: Annual CPI inflation rate increases for the first time since February 2023

CPIH, OOH component and CPI annual inflation rates for the last 10 years, UK, December 2013 to December 2023



The Goods:

9. There are a number of issues in respect of the Goods which create a distortion of the picture and lead to inappropriate assumptions and conclusions.

10. UK machines have different requirements than those manufactured for other (non-EU) markets, they include a requirement for lower emissions (referred to as tier 5 to comply with EU requirements), an electronic controlled hydraulic system, safety adjusted upper frame, ROPS certified cab, air suspension seats, safety steps, additional lighting and advanced rear cameras.

11. Which subsequently means the UK Target Price, which considers only those machines manufactured to UK market standards, will be higher than considering the manufacturing costs of all machines therefore increasing the injury margin.

12. Electric excavators are not produced in the UK. They are not similar to the Goods and although their application may be similar on some occasions their construction is entirely different as is the price point and end user's considerations. The electric machines did not form any part of the considerations of the TRA in the data provided, verified and relied upon. No information was gathered regarding the cost of production or the target price of an electric machines. Electric machines are expected to retail at around [REDACTED – CONFIDENTIAL INFORMATION] the cost of the diesel alternative. This may lead one to question why anyone would want an electric machine and therein lies the need for any end user, as well as the TRA, to consider the differentiators between electric and diesel machines. One key consideration is emissions, particularly important on government led constructions projects and a matter of significant political and governmental concern and focus, in particular addressed in relation to the journey and commitment to net zero, including the Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study⁷.

13. The cost of production of electric excavators will be significantly higher yet their costs have not been included in the calculations of CNV of Constructed Export Price.

14. In accordance with the forecast from [REDACTED – CONFIDENTIAL INFORMATION] electric machines will form around [REDACTED – CONFIDENTIAL INFORMATION] of the market globally by 2028. LG's focus in relation to electric excavators is currently on applications for [REDACTED – CONFIDENTIAL INFORMATION]

15. Battery electric machine customers are therefore buying them for very specific reasons and doing certain types of work which will justify the additional expense. Electric machines also do not compete with customers who intend to hire machines since the initial costs will make such a business unsustainable and unprofitable.

⁷ [Industrial Non-Road Mobile Machinery Decarbonisation Options: Techno-Economic Feasibility Study](#)

16. There are no like Goods which are propelled by an electric engine these should be excluded from any recommendation of a countervailing measures.

Injury:

17. The fundamental error in the TRA assumptions is to find that there is injury which it attributes to a single cause based upon a single company. This error is laid bare in the submission within JCB's own application which acknowledges "Over the injury period, as Table 8 below demonstrates, the market share of the UK industry increased by 12% over the injury period. This increase is exclusively attributable to Komatsu: in the injury period, the Applicant's market share decreased...". In other words, no correlation to the UK market can be drawn because the injury complained of by JCB is not uniformly exhibited across UK manufacturers, in fact, there is no injury at all when both are taken into account, and the UK market share has actually increased. To put it another way 50% of UK manufacturers are not injured at all. TRA has placed its entire review in jeopardy by relying upon the data of a single company as the basis on which it has made all of its calculations in relation to the UK market and costs (during the investigation TRA has relied further upon JCB to provide the only data by which the PRC manufacturers CNV is then calculated, coming from JCB Brasil).

18. It is a flawed principle to only consider a single subject to prove a theory, especially when that theory involves establishing a causal relationship between two variables. The two variables are defined as independent (the variable that has been changed) and dependent (the variable that is being observed for the effects of the change). When establishing a good conclusion to a theory, the investigation must have strong internal validity. The internal validity of an investigation refers to the validity of the measures within that investigation. It is vital that a conclusion is not drawn until it is certain that the independent variable was the only factor that caused the change in the dependent variable, otherwise you cannot be certain that the conclusion is correct. If only a single subject is considered, often there is an alternative explanation for the outcome, which cannot be ignored.

19. The internal validity of an experiment or study is directly related to the control of extraneous variables. An extraneous variable is any factor that you are not intending to investigate but exists and so can affect the outcome of the study. Where extraneous variables are not controlled or accounted for, they often lead to a spurious effect, where a relationship between the independent and dependent variables appears causal but are not. This is likely to lead to inaccurate conclusions being drawn on the relationship between the independent and dependent variables.

20. If an extraneous variable is related to both the independent and dependent variables they are defined as a confounding variable. There is even greater importance to control confounding variables as they can influence both the supposed cause and the supposed effect, with the additional factors often resulting in a distortion of the true relationship. Confounding variables can falsely demonstrate an apparent association between two variables when no real association between them exists. The existence of confounding variables makes it difficult to establish any causal links, leading to a low internal validity and an unreliable conclusion. To establish strong internal validity, confounding variables that influence the relationship between independent and dependent variables should be minimised.

21. To negate the effects of extraneous variables, control variables can be implemented. This is an element that remains unchanged or unaffected by other variables by standardising procedures. Control variables establish a causal relationship between variables by removing extraneous variables. Controlling an investigation is critically important to ensure that the observed results are not just random events or are not caused by other factors. In turn, this mode of hypothesis-testing enhances the internal validity and improves the reliability of a conclusion.

22. Where only a single subject is considered, extraneous variables are not controlled, nor accounted for. It is unreasonable to rely upon any conclusion where there are so many extraneous variables at large that an alternative explanation for the results is not only possible, but likely. When using a single subject only to prove a theory and by ignoring any

extraneous variables, it is impossible to be certain that the independent variable is the only factor that has caused a change. It cannot be demonstrated that the results are affected by the independent variable only. A reliable conclusion cannot be drawn where only a single subject is used. A theory cannot be proven unless a reliable conclusion is drawn. It is a flawed principle to consider only a single subject to prove a theory. All factors require consideration.

23. Not only does the TRA need to investigate the injury suffered but then identify the causal link of that injury to substantiate the theory offered by the “injured party” that its complaint of injury can be attributed, with a good degree of certainty, to dumped imports from PRC.

24. In accordance Regulation 30 the TRA **must** determine whether a UK industry has suffered an injury during the injury period. The TRA must therefore consider the market data available in relation to the UK market as a whole. JCB acknowledge that Komatsu has not suffered injury and that JCB itself has not suffered any real injury. In determining injury Regulation 30 requires the TRA to consider:

*“(a)the volume of the dumped goods or subsidised imports during the injury period;
(b)the effect of the dumped goods or subsidised imports on prices of the like goods in the United Kingdom during the injury period;
(c)the consequent impact of the dumped goods or subsidised imports on a UK industry during the injury period; and
(d)any other factors it considers relevant.”*

25. The TRA has failed to analysis the volume of Goods in relation to their proportion of the total market. The figure produced at Figure 2 of the SEF shows that there is no surge in imports from PRC, rather than the imports from PRC are consistent with a growing market with increased imports from Netherland and Third Countries at a striking similar rate of increase as those from PRC.

26. Figure 8 of the SEF distorts the market share of PRC companies by looking at volume only, JCB manufacture more small excavators and don’t manufacture any above 50 tonne,

therefore looking at market share by weight, particularly where it is not limited to like goods (i.e. only the weights produced in the UK) provides a distortion of the picture.

27. Much of the data compiled by TRA relates to UK Customs Code data (code **84295210**) which relates to goods outside the scope of the review (as well as inside). The Goods under this commodity code are not limited by reference to weight.

Market Share of Chinese Companies

28. The TRA have identified that imports of the relevant Goods from the PRC have captured market share from the UK. JCB say that their share in the industry has decreased by 11% over the injury period⁸ (but that Komatsu's share has increased) and that this happened whilst PRC import volumes increased by 252% in the same period.

29. If the increased level of imports from the PRC was anti-competitive, you would expect to see a significant spike in PRC market share on the UK market, however this is not the case. There has been a small increase, albeit not significant in ways that the TRA could consider to be anti-competitive.

30. LiuGong's market share was [REDACTED – CONFIDENTIAL INFORMATION]⁹

31. On no basis can the above minor fluctuation of market share (which does not reflect steady growth let alone a substantial increase). In accordance with Regulation 31 the increase in imports is not significant and particularly not when considered relative to consumption. Market share is able to identify this, there is growth amongst the market during the POI hence there are more imports, those imports are not substantially different from PRC than from other countries. LiuGong's increase of around [REDACTED – CONFIDENTIAL INFORMATION] during

⁸ SEF 350

⁹ [REDACTED – CONFIDENTIAL INFORMATION]

the POI has completely reversed and is dwarfed in any event by imports from non-PRC manufactures.

32. Market trends show that there isn't an increase in the market share of PRC but also of [REDACTED – CONFIDENTIAL INFORMATION].

33. PRC imports were significantly affected by Covid during 2020 to 2021 as PRC was particularly badly hit with Covid. Excluding that period there is relatively steady numbers of imports. The total sales from PRC (and other countries) per manufacturer are as follows:

[REDACTED – CONFIDENTIAL INFORMATION]

34. The evidence of the growth in market share also shows that the significant growth in demand relates to machines which are over 35 tonnes. There are no goods manufactured by JCB above 27 tonnes. Although Komatsu may manufacture some larger excavators (information in that regard has not been provided to TRA but can be seen above and may explain why Komatsu has not suffered to the same extent). There are currently 9 models offered on the JCB website¹⁰. JCB have been prevented from producing larger machines above 25 tonnes since 30 June 2021 when the expiry of the Tier 4 production ended which was already extended by 12 months due to Covid. In August 2020 CECE reported EU approval to extend the timeframe for Tier 4f engines from 30 June 2020 to 30 June 2021¹¹. JCB did not launch the 370X until after the POI on 20 March 2024. JCB has not since developed a machine in the XXL class range to replace the JS300 which also went out of production in June 2021. Similarly, whilst JCB referenced the JS460 this model was not produced for the UK market (as it only has a tier 2 engine). During the period of investigation JCB did not sell any machines over 42 tonnes. There were a negligible number of sales over 28tonnes during the period of investigation with none sold during the POI. Those which were sold in the period on investigation may have been produced outside of the period.

¹⁰ [JCB Tracked Excavator Range | 13 to 40 tonnes | JCB.com](#)

¹¹ [CEA welcomes Stage V engine deadline extension - Aggregates Business](#)

35. The TRA has confirmed that it has included XL and XXL PCN's on the single basis that machines across the PCNs and in particular across XL and XXL "share physical and commercial characteristics closely resembling one another". Whilst they may look similar, they are in no way the same, the customer in the market for an XXL machine is seldom in the market also for an XL machine (which would ordinarily be cheaper). Given that JCB themselves have proposed a differentiation based on weight alone it ought to be obvious that the weight of the machine is very significant. Its primary significance is in its application¹², larger machines are used for different tasks and industries. Not offering models within the weight class that there is demand is more likely to call injury than any impact from PRC imports since they do not compete.

Overall increase in UK market share

36. The TRA allege that during the injury period JCB has lost market share overall. Imports from the PRC initially decreased in 2020/2021 but have continued to increase thereafter, peaking in the POI¹³.

37. There was a significant reduced volume of imports from the PRC in 2020/2021 (the covid period) caused a reduction in its market share, the increased import volumes since then have continued to capture market share¹⁴.

38. Historically, JCB as regards crawler excavators specifically, has had a relatively small market share on the UK market ([REDACTED – CONFIDENTIAL INFORMATION]).

39. Although there may have been a decrease in JCB's market share in the UK this is not shared with the other UK manufacturer. Komatsu's market share grew by [REDACTED – CONFIDENTIAL INFORMATION].

¹² SEE LGUK Questionnaire.

¹³ SEF 406

¹⁴ SEF 407

40. Although JCB has reported to TRA that its market share has reduced, JCB's market share data on crawler excavators from 2021 – 2023 grew when studying the [REDACTED – CONFIDENTIAL INFORMATION].

41. There cannot be injury to the UK market if there is no reduction in the UK market share overall. The injury complained of by JCB is not uniformly exhibited across UK manufacturers, in fact, there is no injury at all when both are taken into account, and the UK market share has actually increased.

42. The demand for crawler excavators is expected to decline slightly in 2024 due to various industry challenges, such as rising inflation and a surge in building material costs. However, the industry is expected to recover gradually from 2025 onwards. The rising inflation rate is expected to negatively impact the United Kingdom crawler excavator industry, resulting in a surge in building material costs¹⁵. Excavator sales are expected to decrease by up to 10% in 2024 due to lower housebuilding activity and reduced infrastructure project requirements¹⁶.

43. When taking these factors into account in accordance the TRA has failed to comply with the requirements of Regulation 30 to consider the volume of dumped goods (particularly in relation to the volume of goods from other country imports) and their impact. The “injury” complained of cannot be identified and certainly cannot be attributed to PRC imports.

Third Countries

44. The UK market has historically been dominated by imports from countries other than PRC. The volume of imports from all third countries other than the PRC increased 53% during the injury period. The volume of imports from all third countries other than the PRC, taken as

¹⁵ [U.K. Crawler Excavator Strategic Market Assessment Report](#)

¹⁶ [Strategic Overview of the UK Construction Equipment Market \(2024-2029\) - Highways Industry](#)

a whole, was approximately 147,770 tonnes during the POI, which equated to a market share of 81.5%.¹⁷

45. In 2019, supplier company market shares in the UK crawler excavator market were reported, in descending order down to 1%¹⁸:

Hitachi (Japan) ([16-18%])

Volvo (Sweden) ([14-16%])

JCB (UK) ([10-12%])

Caterpillar (US) ([10-12%])

Komatsu (Japan/UK) ([8-10%])

Doosan (S Korea) ([7-9%])

Kobelco (Japan) ([4-6%])

Case (USA) ([4-6%])

Hyundai (S Korea) ([2-4%])

LiuGong (China) ([0-2%])

46. This data confirms that LiuGong had a significantly small market share in 2019. Hitachi, Volvo, Caterpillar and Komatsu all had a large share of the UK market during the POI. The TRA needs to take into consideration whether there has been a significant increase in particular shares of particular companies from third countries, other than in China before it can reach a conclusion on the impact of PRC imports.

47. Some importers from Japan, Italy and Korea did see a fall in market share during the injury period.

48. The reasons for these are not uniform, for example, Japanese brand Kobelco's market share fell from 11% to 7% which is understood to be due to an engineering issue involving emissions on their stage v engine introduction and lack of engine supply, which affected all of their excavators by over 18 tonnes.

¹⁷ SEF 474

¹⁸ CCCME Comments published 1 August 2024 (footnote 22)

49. Other importers from [REDACTED – CONFIDENTIAL INFORMATION] also saw losses in market share. [REDACTED – CONFIDENTIAL INFORMATION] had a [REDACTED – CONFIDENTIAL INFORMATION] share in 2021, down to a [REDACTED – CONFIDENTIAL INFORMATION] share in 2022. If PRC importers were dumping one would expect to see a uniform affect across all competitors.

50. [REDACTED – CONFIDENTIAL INFORMATION] had a market share of [REDACTED – CONFIDENTIAL INFORMATION] in 2021 which fell to [REDACTED – CONFIDENTIAL INFORMATION] in 2023, primarily due to a lack of market confidence following the purchase by Hyundai and rebranding to Develon¹⁹. For the same reason, [REDACTED – CONFIDENTIAL INFORMATION] market share fell from [REDACTED – CONFIDENTIAL INFORMATION] in 2021 to [REDACTED – CONFIDENTIAL INFORMATION] in 2023.

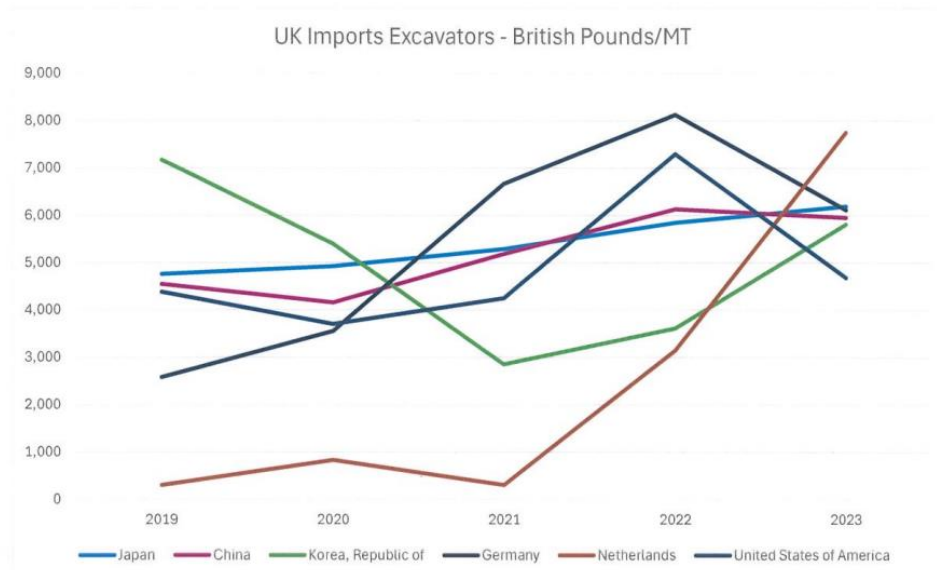
51. The biggest gain in market share during the POI was by [REDACTED – CONFIDENTIAL INFORMATION], which had a market share of [REDACTED – CONFIDENTIAL INFORMATION] in 2021, [REDACTED – CONFIDENTIAL INFORMATION] in 2022, and [REDACTED – CONFIDENTIAL INFORMATION] in 2023.

52. The table below is based on ITC Trademap data²⁰ and shows that Chinese along with Japanese excavator prices trended fairly closely. Import prices from The Netherlands were significantly lower. From 2020 to 2021 Korean prices also moved significantly lower than Chinese prices and remained lower through 2023. In 2022, Chinese prices were also lower than Japanese prices.

¹⁹ [Develon – the new name for Doosan](#)

²⁰ [Trade statistics | ITC](#)

Table 3



53. Figure 6 of the SEF supports that the prices are consistent between PRC and the UK when reviewed on the same basis (price per KG), that significantly opposes the theory that goods are being dumped and are being used in an anticompetitive manner. Over the period the price of Goods has risen and that is consistent across PRC and UK and would plot similarly on the above table.

54. Regulation 31 requires the TRA to consider whether the volume of dumped goods imported have significantly increased. In so doing consideration should be given to whether those goods have “depressed or suppressed domestic prices of the like goods produced in the United Kingdom to a significant degree”. It is the evidence of JCB that their prices have continued to rise, it is consistent with market data that imports have risen consistently across third countries, PRC and The Netherlands. There is no evidence in accordance with the mandatory requirement of Regulation 31 of a significant increase in PRC imports or depression or suppression of UK prices.

55. Notwithstanding that TRA have identified that the target price may be different to the constructed export price, different goods do cost different amounts, that is not the same as suppression or depression of prices. JCB have provided no evidence of suppression of prices (by comparison to other goods outside of the Goods for review or by comparison to exports to a like country) and specifically confirm there is no depression of prices.

56. In order to reach a decision on the cause of injury Regulation 33 requires “the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including—

(a) actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity.

(b) factors affecting domestic prices of the like goods;

(c) in the case of dumping, the magnitude of the margin of dumping;

(d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments.

57. The requirement is mandatory. JCB have confirmed their utilisation, sales, output and profits increased. Market share to be considered is that of the UK industry (not only JCB) which has increased also.

58. In accordance with Regulation 35:

(1) For the purpose of making a determination under regulation 27(2)(b), the TRA must examine whether any known factors other than the dumped goods or subsidised imports (“other known factors”) have caused or are causing injury to a UK industry.

(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.

(3) For the purpose of paragraph (2), other known factors may include—

(a) the volume and the prices of imports that are not dumped or subsidised into the United Kingdom;

(b) contraction in demand or changes in the pattern of consumption of the like goods in the United Kingdom;

(c) trade restrictive practices of and competition between the overseas exporters and the UK industry;

(d) developments in technology;

(e) the export performance and productivity of the UK industry.

59. The only factor properly considered by TRA in causing the “injury” (which is only that prices are not increased as much as inflation or in line with exports to unamend countries is that of PRC imports) is an increase in imports from PRC. By not reviewing in granular details the effect of Korean imports, Dutch imports or reviewing and breaking down the imports from other third countries no reliable correlation can be drawn between an increase in PRC imports and UK manufactured prices not increasing as JCB would like. Figure 2 of the SEF clearly shows PRC imports increase at a similar rate as those from the Netherlands and Third Countries. There is no investigation into whether the prices of machines imported from the Netherlands or Third Countries affect the UK market share (which is taken as JCB only) or prices. There is evidence that JCB has focussed its efforts on producing other machines, which LiuGong also import like goods of, but JCB do not complain that such imports are causing injury in the same way as the Goods. JCB, during the POI, secured its biggest order ever which were for wheeled rather than tracked machines. Without having a comparator within the UK Market (i.e. Komatsu) is it impossible to reliably evaluate the effect of such a business strategy²¹.

Covid:

60. Whilst there is a short consideration of the effects of covid on the market it would appear that there has not been due consideration given to how it has affected all of the cooperating parties. LG has provided its sales information which show its price per kilo and price per unit have dropped over the POI. This suggests the factor affecting prices is more likely to be one that affects the importers from PRC just as much. The Covid-19 pandemic had an unprecedented effect on every aspect of business’ daily interaction. Whilst low-contact

²¹ [JCB Wins it's Biggest ever UK Order | News | JCB.com](#)

industries did not bear as much loss as high-contact industries (i.e. accommodation and food services – in which physical interaction is essential) overall level of output reduced drastically. The Office for National Statistics (ONS) found a decline of 17% in business' level of output in 2022. Covid-19 forced business including JCB to shut down operations. This led to a decrease in JCB's sales by 50% in 2020. The company was also forced to dismiss 950 members of staff in addition to 500 agency workers²².

61. The construction industry has always had a problem with a shortage of skills. The industry is aging and male dominated. The skills shortage was amplified by Covid-19. The pandemic impacted the ability for younger new employees to train and participate in apprenticeships. Those that had started such schemes were among the first to be enrolled into the furlough scheme or alternatively dismissed as more experienced and skilled staff were prioritised and retained. This inevitably led to an overall reduction in new talent entering the industry and has created a skills gap. On a general note, this proves to reduce productivity and efficiency, quality of work, innovation and competitiveness. These can all help to reduce a business' competitive advantage which ultimately reduces profitability.

Increased cost of materials:

62. Demand for steel is far greater than the supply of it. Naturally, this has seen a drastic increase in its cost.

63. Business' generally only buy steel when it is needed and so typically are not protected from possible price increases in future contracts. This means that businesses pay the market rate on the day of purchase. This leaves businesses liable to fluctuations in market price and leads them susceptible to increased material costs.

64. Supply costs have increased over the period of injury, including steel prices and energy costs. The Ukraine-Russia war has added another element to the volatility of the cost of

²² [Coronavirus: Up to 950 JCB jobs at risk as 'demand halves' - BBC News](#)

materials. In 2021, Russia was the fifth largest crude steel producer in the world, producing 76 million tonnes worth of steel. In 2022 production fell to just over 71 million tonnes. Whilst as of now Russia's steel production has almost returned to pre-conflict figures, the lack of access to raw materials located in both Ukraine and Russia has undoubtedly affected business reliant on steel globally.

Poor management:

65. The management of company is indicative to its success. Good management practices encourage efficiency in workers and employee retention. The ownership of businesses especially where it revolves around dynasties can help to advance an autocratic management style. Autocratic management styles foster toxicity in the work environment. They help to promote distrust and frustration and lead to high-pressure working environments. Lack of adequate communication between management and its employees leads to lower productivity and disengagement in the work force. Decisions are often made without consultation with the wider workforce which lowers employee morale. In turn this helps to stunt business growth and can waste resources. All of which affect profitability.

Lack of investment in research and development:

66. Since the pandemic investment in research and development across all sectors has declined. This is largely due to the increase in uncertainty over economic environment. R&D investment across automotive sections is generally around 5-10%²³. R&D investment is critical to long term success to stay ahead of trends, products and demands, attract investment and manage risks. It is an essential part of business operations and is fundamental to enhancing products and services. It is essential part of ensuring interest from a business' consumer base. A lack of adequate research and development can stunt growth and competitive advantage thus profitability.

²³ [How to Know Your R&D Spend is Appropriate - Kene Partners](#)

JCB in focus:

67. It is unsurprising that JCB has faced a decline in profitability of recent note. But it would be inaccurate to attribute this to the import of Chinese goods into the UK market.

68. JCB has had a plethora of issues recently, one of which being the ongoing HMRC tax fraud investigation. The three-year investigation is one of a serious nature and is only launched where HMRC consider there to be significant tax loss. The case regarding the ownership of shares held offshore in Bermuda could see JCB's owners owing £500m to HMRC²⁴. Additionally, it is likely that such media exposure has impacted the company's reputational value which in turn could have also impacted JCB's profitability.

69. JCB has been the centre of a family dispute²⁵. The involvement of family feuds and their separate interests reflect in the management of the company.

70. By looking at a single manufacturer with no control or other UK manufacturers (where Komatsu have elected not to cooperate despite having an increased market share over the POI) means that other factors which may affect a business but not the wider market have not been given the correct recognition and consideration that they ought to. One only has to look to JCB's own submission to realise that the issue is not shared with the only other UK Manufacturer and the root of JCB's complaint regarding an "injury" do not fall at the door of the PRC manufacturers.

Particular Market Situation.

71. The TRA has concluded that there is a particular market situation (PMS) in PRC.

²⁴ [Tory donors from JCB empire could face £500m bill to settle tax inquiry | Party funding | The Guardian](#)

²⁵ [JCB family feud takes new twist](#)

PRC State Influence.

72. JCB alleges that all aspects of the excavator supply chain within the PRC are influenced by the GoC and are subject to government policy supervision.

73. JCB relies upon the government issued guidelines to provide evidence to support the claim that the GoC both directly intervenes in the allocation of resources and indirectly influences company activities. There is no evidence provided to support such an assumption.

74. CCCME has provided a response previously which says that JCB wrongly interprets the position and power of the Chinese Communist Party (“CCP”) in relation to its ability to ‘exercise control over the economy’. The true position is that the CCP can by no means play a role in the company’s decision-making process. Whilst the SEF says that LiuGong ‘actively promotes its alignment with government policy’ a business which aligns with plans of growth is not at all unusual. It is the sole aim of almost every company. One of the main considerations in finding state control from the TRA review is the existence of the 14th Five Year Plan (FYP)²⁶. JCB alleges that further evidence of control can be seen in the “market-distorting objectives” of the FYP. Plan says that it will “*reduce the production and operating costs of enterprises, and enhance the rootedness and competitiveness of the manufacturing industry.*” JCB also say that it outlines that ‘responsible parties’ should allocate public resources and guide and control social resources to these ends, which they say indicates the kind of incentive structure that the plan intends to set up in order to get the market players to behave in the desired way. The plan does state that it will rely on the role of market player to achieve the tasks – suggesting there is no control exerted. The so-called “market-distorting objectives” include optimizing and upgrading the construction machinery industry, which is a very general policy and would be put forward by any government. The CCME has commented that the 14th FYP should be read only as a guidance document which ‘positively pictures the

²⁶ [t0284 14th Five Year Plan EN](#)

future development’, not a binding dictate intertwined with state compulsory forces. The Chinese Government does not attempt to fulfil the economic goals set up in the 14th FYP via compulsory national instruments nor does it impose punishment on those individual producers or sector which do not satisfy the FYP objectives. The FYP is simply a set of proposals that are designed to be mutually beneficial. The TRA does not identify any solid evidence to demonstrate that the government has materially exercised any powers to intervene in the market. The FYP simply indicates that a certain sector is encouraged by the FYP, namely construction machinery. Simply encouraging a certain sector in the FYP does not entail any compulsory binding force or actual governmental intervention to influence market forces in the excavators sector. JCB wrongly interprets the nature and legal position of the FYP – it is simply an *ideological growth plan* and is not designed to influence LiuGong or any PRC manufacturer.

Made in China 2025 policy²⁷

75. The policy aims to reduce PRC reliance on imported technology by improving its industrial capacity. The plan details objectives to “accelerate improvements to product quality” and “[c]oordinate the layout and promote the R&D and industrialization” in the construction machinery sector.

76. One of the basic principles of the policy is to let the market lead with government guidance. The policy is guided by an ideology, an ideology of growth, just as the UK government has set out in its own policies, budget and manifesto.

77. The TRA, whilst highlighting concerns over government influence and involvement makes no tangible connection between the issues it identifies in relation to what it terms government influence and why that creates an unreliability in the data relating to normal value or prices being, what JCB allege as “artificially low”. The sole comment is at paragraph

²⁷ [t0432 made in china 2025 EN](#)

157 which simply states “The TRA has found evidence that government influence causes the price of excavators to reflect non-commercial factors.” There is no identification of the non-commercial factors or how they affect the value and sales in PRC.

Labour Manifesto²⁸

78. The Labour government plans to introduce a new industrial strategy to remove barriers to growth. They will produce plans for the advanced manufacturing sector as part of its commitment to help it thrive. It ran on a manifest of growth.

79. Labour wants to establish an Industry Strategy Council to provide expert advice. They aim to ensure a pro-business environment, with a competition and regulatory framework that supports innovation, investment and high-quality jobs. Procurement and trade policy will also be aligned with our industrial strategy priorities.

Invest 2035²⁹

80. The Invest 2035 paper confirms that Labour’s strategy will focus on tackling barriers to growth in our highest potential growth-driving sectors and places, creating the right conditions for increased investment, high-quality jobs and ensuring tangible impact in communities right across the UK.

81. The strategy’s goal is to capture a greater share of internationally mobile investment in strategic sectors and spur domestic businesses to boost their investment and scale up their growth – an essential step in achieving sustainable, inclusive and resilient growth.

²⁸ [Change – The Labour Party](#)

²⁹ [Invest 2035: the UK's modern industrial strategy - GOV.UK](#)

82. One of the growth-driving sectors identified is advanced manufacturing. Labour says there is a strong case for governments to more actively direct the structure of the economy. Through the experiences of countries around the world, a new perspective on industrial strategies has emerged in recent years that takes a more practical and pragmatic view. This approach is one that seeks to place private business, entrepreneurship, and innovation at its heart, supported by governments playing a strategic and coordinating role beyond the fundamentals of upholding the rule of law and macroeconomic stability.

83. Actively shaping and directing the economy in this targeted way means that the government has to choose what to do – and importantly what not to do. Even when governments do not have explicit industrial strategies, they still take decisions that impact specific sectors. An industrial strategy creates a framework for systematic prioritisation to maximise growth and broader benefits.

84. The policy provides that Government intervention can reduce uncertainty and support the development of critical sector-specific knowledge, and crowd in private capital to growth-driving sectors. By providing targeted support, government can foster competitive markets to improve efficiency and improve the performance of interconnected value chains, ultimately benefiting consumers through better prices, quality, and choice.

85. The previous government had similar aims, plans and provisions (including economic support schemes) such as the UK Plan for Growth 2021³⁰.

Steel

86. Whilst the TRA recognised that China is a (if not the) major producer of steel, its steel is sold on a free-market basis meaning that it is available (and used) by manufacturers around

³⁰ [Build Back Better: our plan for growth \(HTML\) - GOV.UK](#)

the world, which may include JCB. China dominates world steel production. It produced 54% of the world's steel in 2023.³¹ India is the second largest steel producer globally³².

87. In 2023, the UK produced 5.6 million tonnes of crude steel. China produced 1,019 million tonnes in the same year³³. Steel production has now ceased in the UK. It is inevitable that steel, being the major component of the machines, will therefore be cheaper in PRC (where there are less transport costs) than the UK. One may therefore expect that PRC machines may be manufactured, and thereafter sold, at a lower cost than those manufactured in the UK (and included in the UK target price).

88. Section F2.1.2 identifies various concerns regarding distortions in the steel market in China and the effect on the global steel prices, which is supported by a study³⁴ which concludes the market practices and government influences in China distort the global steel market. That is to say the concern is that the ability to import cheap Chinese steel³⁵ raises concern for global steel production and trade. This supports rather than harms the view that the ability to purchase steel from China cheaply is a global issue not a local one. There are no findings which appear to support or evidence a finding that this creates a PMS, the evidence provided is contrary to this and relates to steel being available cheaply to all, including UK producers.

89. Similarly, the use of parts and other raw materials do not create a PMS, the evidence used in support does not identify any preference or measure which would create artificially low costs. The evidence supports that the use of raw materials/parts is again a global issue, with Cummins US providing engines and hydraulics which are both sold domestically and exported³⁶. There is no finding by the TRA that the raw materials are available to PRC

³¹ [World Steel in Figures 2024 - worldsteel.org](https://worldsteel.org)).

³² [India Steel Market Size & Share Analysis - Industry Research Report - Growth Trends](#)

³³ [Total production of crude steel](#)

³⁴ [Competitive Neutrality of State-owned Enterprises in China's Steel Industry: Causal Inference on the Impacts of Subsidies](#)

³⁵ [It's too late for tariffs to save British steel | The Spectator](#)

³⁶ [Global and China Hydraulic Industry Report, 2020-2026 - ResearchInChina](#)

companies at an artificially low rate (rather than these are available to all, including UK manufacturers).



90. JCB sources certain steel fabrications and welded components for its excavator production plant in the UK from its manufacturing facilities in India. This approach is a key aspect of JCB's global supply chain strategy, designed to optimize production costs and maximize capacity utilization across its worldwide operations. Independent research report by [REDACTED – CONFIDENTIAL INFORMATION] confirmed:

[REDACTED – CONFIDENTIAL INFORMATION]

91. JCB manufactures in plants outside the UK including in PRC and India. In India JCB has established manufacturing facilities in India, including those in Pune and Jaipur, which are equipped to produce steel fabrications and welded components. These facilities capitalize on India's cost advantages in labor and materials. Heavy tracked crawler machines are also manufactured in Pune, India, which exports to over 80 countries³⁷. For example, JCB's £65m (\$82.9m) plant in Vadodra, India, manufactures components for JCB machines globally³⁸.

Components imported from India include:

³⁷ [JCB showcases new range of tracked excavators in Pune](#)

³⁸ [JCB chooses TVS Supply Chain Solutions for in-plant logistics at Vadodara | News | Automotive Logistics](#)

- **Welded Steel Fabrications:** Critical structural elements such as frames, booms, and arms essential for excavators.
- **Subassemblies:** Larger assemblies, such as undercarriages or partially welded components, which are shipped to the UK for final assembly.

This strategic integration of Indian production capabilities supports JCB's efforts to balance cost efficiency with operational flexibility.

92. TRA also find that another indicator of state inference is GOC subsidies to PRC shipping and freight companies³⁹. LiuGong for its part does not use Chinese shipping companies to transport its machines. LiuGong's preferred partner is Wallenius Wilhelmsen, who are a Norwegian company. Wallenius Wilhelmsen provide extensive shipping services to and from PRC, including RoRo shipping which is the preferred method of shipping construction equipment and large machinery, including excavators. Wallenius Wilhelmsen have key agreements and services for shipping between PRC (primarily the port of Shanghai, Tianjin, Guangzhou) and Europe (primarily the port of Bremerhaven (Germany), Zeebrugge (Belgium) and Southampton (UK)).

93. None of the findings in relation to prices of finance, land, energy, R&D, and labour reflect government intervention and policies which are sufficient to create a PMS. Similar R&D and other benefits exist in many countries including the UK. None of these factors would give rise to a PMS in absence of other factors or a finding of state control. The UK government for example gives support to industry in energy pricing also, including in decarbonising⁴⁰ and during 2022 to 2023⁴¹. Such schemes are not indicative of a PMS.

Flawed data approach

³⁹ SEF 198

⁴⁰ [Carbon net zero funding and grants - CCS](#)

⁴¹ Energy Bill Relief Scheme

94. In reviewing the data provided (in the injury margin calculator and the dumping margin calculator) we have identified errors in calculation which result in a material difference to the conclusions/amount applied. We have also identified a departure from the constructed export price in accordance with Regulation 15.

Rebates

95. The first considerable error is the calculation of the Rebates information supplied by LG in its exporter questionnaire. These were supplied in negative value and should therefore have been added to the adjustments to create a negative impact. Instead, these were added causing a double negative which adds back the tax having a double effect on the final figure.

96. In calculating the constructed normal value for LiuGong Group, the TRA has used a high profit margin of [REDACTED – CONFIDENTIAL INFORMATION] in tab "Profit Margins", which was derived by comparing the adjusted sales prices and the EXW COP & AS&G cost per unit for the domestic sales, in tab "EXP Domestic Questionnaire Data" of the TRA's dumping margin calculation worksheet. The adjusted sales price was determined by deducting "Indirect Taxes Recoverable", "Rebates adjustment", "Domestic Freight adjustment", "Other charges" and "Unit rebates" from the gross invoice value.

97. There are two errors in this calculation of adjusted sales price. "Rebates adjustment" should be added to the gross invoice value rather than be deducted. LGLG and CZLG have reported the rebates for their domestic sales in Table [REDACTED – CONFIDENTIAL INFORMATION] as negative figures. If the rebates expressed as negative figures were deducted from the gross invoice value, the result would be adding a rebate (expressed as positive figure) to the gross invoice value, which arrives at a higher sales price. The formula requires revision to add rather than subtract the rebate giving the desired effect. This is also evidenced by the formula in column "Net invoice value" of Table [REDACTED – CONFIDENTIAL INFORMATION], in which LZLG and CZLG correctly calculated the net invoice value by deducting tax, adding rebates and deducting other charges.

98. In addition to the above "Rebates adjustment" and "Unit rebates" are double deducted. The figures shown in the column "Rebates adjustment" are the total amount of rebates for each transaction, and the figure "Unit rebates" is the rebate amount for one RMB amount of the sale (i.e., total rebate amount divided by gross invoice value net of recoverable tax). The TRA has deducted both of these two columns. The TRA should only deduct the "Rebated adjustment" column, and should not deduct "Unit rebates" column, when calculating the "OCOT Price Adjustments (CNY/Total)". Otherwise, the rebates are deducted twice.

Denominator For Cost of Production and AS&G Expenses

99. In tab "CNV Adjustment" of the dumping margin calculation worksheet, the TRA has recalculated the cost of production and AS&G for each PCN by inflating the cost of production and AS&G value reported by LZLG and CZLG by a certain percentage, to arrive at a revised Cost of Production (COP) and AS&G for each PCN. The total revised cost of production and AS&G is then divided by the "units produced", to arrive at a per-unit COP and AS&G. In other words, the TRA has used "units produced" as denominator for both the cost of production and the AS&G expenses which creates a false result. The total cost of production ought to be divided by the units produced to get a per-unit cost of production, and divide the total AS&G by the units sold to get a per-unit AS&G, then add the per-unit COP and per-unit AS&G up to get the per-unit COP and AS&G. By using units sold to work out cost of production that calculation will be giving a false result since there will be units which are produced and not sold within the period and units sold but not produced within the period.

100. This is evidenced by the formulas in Table [REDACTED – CONFIDENTIAL INFORMATION] of the questionnaire response (further updated [REDACTED – CONFIDENTIAL INFORMATION]), in which the last row "Manufacturing cost per Unit" is correctly calculated using the quantity produced as the denominator.

101. To calculate the per-unit AS&G expenses, the TRA should use the units sold as denominators. This is because the total of each AS&G expense item is for the quantity of the products sold during the investigation period. This is evidenced by the formulas in table [REDACTED – CONFIDENTIAL INFORMATION] of the response to the TRA's June 28, 2024 additional data request), in which the row [REDACTED – CONFIDENTIAL INFORMATION] is correctly calculated by dividing the AS&G expenses by the quantity sold, and [REDACTED – CONFIDENTIAL INFORMATION] is calculated by adding [REDACTED – CONFIDENTIAL INFORMATION].

The CNV Profit Ratio Calculation

102. The TRA has calculated a profit margin of [REDACTED – CONFIDENTIAL INFORMATION] and used that profit margin to construct the normal value. Even after correcting the errors identified above are corrected the profit margin is still as high as [REDACTED – CONFIDENTIAL INFORMATION]. This profit margin is calculated from LiuGong's domestic sales in China, and only the "profitable sales" were considered.

103. It would appear that the TRA having determined there is a PMS has opted not to use the data of LiuGong's domestic sales for the basis of Normal Value. However, the TRA appear to use domestic sales transactions as the basis for determining the profit margin. If the TRA believes the domestic sales prices are reasonable and are a fair representation of the normal value of the product concerned, then it should use it directly as the normal value. If it believes the domestic sales prices are distorted and decided not to use them as normal value, then there is no basis for using a portion of that sales data for determining the profit ratio and then using that profit ratio for the construction of the normal value.

104. Secondly, comparing the transaction-by-transaction domestic sales with the weighted average COP and AS&G while dropping the lower price sales is mathematically wrong. The domestic sales are transaction-by-transaction data. COP and AS&G are weighted average cost and expenses, meaning that it is derived from an average of higher cost models and lower cost models. Assume that there are two models: model A and model B for PCN M. Model A has a COP of 1.1, model B has a COP of 0.9. The weighted average COP for PCN M is 1.0. If

model A is sold at a price of 1.2 and model B is sold at a price of 0.95, based on the current methodology of the TRA, only model A is considered in profit margin calculation because model B is "not profitable" per the TRA's understanding. Actually, it is not true. When considering whether a model is profitable, one must either compare the sales price against the COP for that specific model, or compare the PCN weighted average sales price with the PCN weighted average COP. In this case, the weighted average sales price of PCN M is [REDACTED – CONFIDENTIAL INFORMATION], higher than the weighted average COP of PCN M, which is [REDACTED – CONFIDENTIAL INFORMATION] thus the whole PCN is profitable. That is how the Income Statement is prepared from a financial accounting perspective. When comparing model levels, both A and B are profitable because the sales price for both of them are higher than their COP on a model specific basis. That is what "average" is. Average is derived from higher numbers and lower numbers. It makes no sense to compare a transaction-by-transaction figure while dropping the transaction figure lower than the average.

105. Even if the TRA continues to apply its current methodology of removing what it determines "non-profitable" sales when calculating profit margin, it should at least calculate a profit margin for each PCN and construct the normal value using each PCN's respective profit margin or using a weighted average profit margin. See the table below:

[REDACTED – CONFIDENTIAL INFORMATION]

106. In accordance with the table above that during the period of investigation, LGUK sold [REDACTED – CONFIDENTIAL INFORMATION]

107. The TRA may wish to use a uniform profit margin for all the PCNs. The most appropriate profit margin in that scenario would be the profit margin in the last Income Statement for LiuGong. The profit margin is by definition of the profit of the company as a whole, and the only way to get a reliable profit margin is to look into the audited Income Statement. From the [REDACTED – CONFIDENTIAL INFORMATION] submitted by LZLG, the profit margin for the period of investigation for the whole company is [REDACTED – CONFIDENTIAL INFORMATION] for the Goods concerned. The TRA should use this profit

margin directly in its CNV calculation. Although this may give the appearance of a profit margin which is too low given the COP and AS&G costs. This is distorted due to increased material costs applied by 65% for the steel inputs and 112% for the non-steel inputs. To keep the profit margin unchanged at [REDACTED – CONFIDENTIAL INFORMATION], the sales price would necessarily increase to take account of both the increased costs and the higher monetary number as would therefore be derived for profit as a percentage of those costs. There does not need to be an alteration to the profit margin in order to adjust the Constructed Normal Value to make it "normal" in taking account of a PMS. The European Union, for example, uses the company's actual profit margin to construct the recalculated COP and AS&G in its normal value calculation in antidumping proceedings⁴². The United States takes the similar approach by taking a profit margin for the Income Statement of a publicly available financial statement from the Surrogate Country (i.e. benchmark country)⁴³.

108. As an alternative to using Lui Gong's actual profit margin the TRA could alternatively use the profit margin of 11%⁴⁴ as advocated in the setting of the Target Price and applied to JCB.

Constructed Export Value

109. Regulation 15 requires the TRA to construct an export value where there are no associated imports (as in LiuGong's case) which is based upon the sale to the End User (which the TRA has identified as Net Invoice Value) but that the price may be adjusted as follows:

(5) Where the export price of the goods concerned is constructed in accordance with paragraph (4), the TRA may make adjustments—

⁴² See for example <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0983&from=EN> para 67 the relevant authority confirmed it "... would establish selling, general and administrative costs ('SG&A') and profits based on publicly available financial statements of aluminium extrusion".

⁴³ CFR 351.408 of the United States, "Calculation of normal value of merchandise from nonmarket economy countries":

<https://www.ecfr.gov/current/title-19/chapter-III/part-351/subpart-D/section-351.408> which confirms "For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country".

⁴⁴ SEF 504.

(a) for actual costs incurred by the importer or exporter of the goods concerned in the United Kingdom; and

(b) for profits that would usually be accrued by an importer of the goods concerned in the United Kingdom that is not an associate of or does not have a compensatory arrangement with the overseas exporter.

(6) The adjustments that the TRA may make in accordance with paragraph (5) include adjustments in relation to—

(a) transport costs;

(b) insurance;

(c) handling, loading and ancillary costs;

(d) import duties;

(e) any taxes payable in the United Kingdom by reason of the importation or resale of the goods in the United Kingdom;

(f) a reasonable margin for profit as determined by the TRA;

(g) selling, general and administrative costs;

(h) any other costs incurred in the importation and resale of the goods.

110. Based upon the above the only reduction from the Net Invoice Value ought to be profit margin, import costs, sales commission and UK transport. The TRA did not compare the export price with the constructed normal value (CNV) at the same level when calculating the dumping margin.

111. In addition to these costs the TRA has reduced the Net Invoice Value by Pre-delivery inspection costs⁴⁵. In accordance with the information provided by LGUK in support of the data regarding PDI costs those costs include the addition of accessories [REDACTED – CONFIDENTIAL INFORMATION]. Such additions form part of the pricing of goods provided for domestic sales (i.e. they are not additional, the goods are unfinished when arriving in the UK) and have been included in the CNV. In relation to buckets these are referred to as [REDACTED – CONFIDENTIAL INFORMATION] on the exporter submission [REDACTED – CONFIDENTIAL INFORMATION] table. Those accessories and other assemblies and additions also incur

⁴⁵ see Paragraph 298 of the SEF

additional labour costs (represented as AS&G overheads in the submission from LGUK). It is therefore necessary in comparing like for like that PDI and AS&G costs are not deducted from the net invoice. Although it cannot be confirmed by LuiGong it is anticipated (and particularly based upon the figure 3 produced in the SEF) that the Target Price data also includes accessories. LGUK has provided supporting information identifying the PDI costs.

112. In that tab, the total amount for "Dipper" is [REDACTED – CONFIDENTIAL INFORMATION]. This ties exactly to the raw material line item named "[REDACTED – CONFIDENTIAL INFORMATION]" of LZLG submitted in [REDACTED – CONFIDENTIAL INFORMATION]. For another instance, the item named [REDACTED – CONFIDENTIAL INFORMATION].

113. The cost of production data of LZLG and CZLG is reported by PCN, of all the products concerned, without distinguishing the destination, and there is not any field in the PCN to distinguish whether the product is with a bucket or without a bucket. In such circumstances, if the company produces two models: model A and model B, falling into the same PCN (e.g. M), assuming model A is sold to LGUK without bucket and model B is sold in domestic market or other countries with a bucket, then the reported COP would include bucket as the COP is calculated on weighted average PCN-specific basis. Since UK sales will be affiliated and excluded the cost of production without accessories for the UK should not appear in the calculation of the CNV.

114. The same issue exists regarding [REDACTED – CONFIDENTIAL INFORMATION]. When calculating the adjusted UK sales price, the TRA has deducted the [REDACTED – CONFIDENTIAL INFORMATION] from LGUK's sales invoice value. This means that the adjusted UK sales price is net of any [REDACTED – CONFIDENTIAL INFORMATION]. However, the COP and AS&G as reported by LZLG and CZLG is inclusive of [REDACTED – CONFIDENTIAL INFORMATION]. See verification exhibits [REDACTED – CONFIDENTIAL INFORMATION] should therefore not be deducted from the Constructed Export Value in accordance with Regulation 15.

115. The above should equally apply when calculating the injury margin. Specifically, the TRA should either include the PDI cost and warranty expense in the CIF price or deduct the accessories cost and warranty expense from the target price.

Handling Expenses – CIF Value

116. The dumping margin is the difference between the export price and the normal value of the goods being dumped, described as a percentage of the export price at a level of Cost, Insurance and Freight (CIF), see Paragraph 111 of the SEF. The term CIF is defined as cost, insurance and freight, which means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage. In accordance with such definition, the seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. Normally, the handling expenses, also known as port charges, refer to the charges incurred at the loading port, such as customs clearance fee, THC, port charges, document charges, etc. The handling expenses are a typical cost necessary to bring the goods to the named port of destination and should be undertaken by the seller, in case of CIF term. However, the TRA constructs the CIF price of LiuGong Group by summing up the ex-works price, domestic freight, ocean freight and insurance, without handlings, s [REDACTED – CONFIDENTIAL INFORMATION].

117. The handling expenses data can be extracted from LiuGong Group' submission, as LiuGong Group provides the handling expenses for all export of the goods concerned to the UK during the POI, see [REDACTED – CONFIDENTIAL INFORMATION].

Other Costs - CNV

118. The landed price used for injury margin calculation does not include any other cost associated with import. In accordance with Regulation 15 it is not appropriate to adjust the costs by removing other costs which are relevant.

119. The landed price is the price of the relevant goods when they arrive at the UK port. It equates to the CIF import price plus any relevant import duties and other costs associated with import, see Paragraphs 356 and 505 of the SEF. The landed price calculation in AD0047 - Injury Margin Calculator – LIUGONG, provides a landed price is totally the same as the CIF UK border import value, no import duties and other costs associated with import are adjusted, see Landed Prices and Injury Margin in excel file AD0047 - Injury Margin Calculator – LIUGONG.

120. Although the good concerned exported to the UK is duty-free, the other costs associated with import, such as port fee, customs fee, etc., should be added. The TRA could refer to LiuGong Machinery (UK) Limited's submission for such cost. LiuGong Group requests that the TRA add the import duties and other costs associated with import when calculating the landed price.

121. The TRA Should Disclose to LiuGong Group the Detailed Data Sets And Worksheets Regarding The Calculation of Steel and Non-steel Adjustment Percentage Ratios.

122. Whilst the TRA is able to make adjustments as listed in Regulation 15 those adjustments are constrained by the [Guidance](#) this requires the TRA to only make adjustments to the cost elements that are not substantially determined by market forces.

123. The TRA should only make adjustments to those elements of cost or profit that are not substantially determined by market forces. Otherwise, cost elements or profits that are substantially determined by market forces should be based on the exporter's records where conditions set out in regulation 11 of the dumping and subsidisation regulations are satisfied.

124. The TRA should only make adjustments in relation to significant cost or profit elements. The TRA should use its judgement on what constitutes a significant cost or profit element in light of the circumstances of the case.

125. In calculating the adjusted [REDACTED – CONFIDENTIAL INFORMATION] all the raw materials used by LiuGong for the production of excavators.

126. In accordance with the guidance the TRA should first determine which cost elements are not substantially determined by market forces, then only make adjustments to those cost elements found not to be substantially determined by market forces, and the adjustments should also only be made to significant cost or profit elements. A review of the SEF indicates that the TRA did not do so according to such requirements. While LiuGong is not hereby comment on the TRA's determination of which raw material cost are not substantially determined by market forces, LiuGong does comment that the upward adjustments to all raw materials is not in line with the Guidance's requirement of only making adjustments to significant cost (see also para 89 to 91 above). See the table below breakdown of LiuGong's direct cost derived from the dumping margin calculation (before any upward adjustments):

[REDACTED – CONFIDENTIAL INFORMATION]

127. [REDACTED – CONFIDENTIAL INFORMATION]

128. As shown in the above breakdown table, the cost reported in the broad [REDACTED – CONFIDENTIAL INFORMATION].

129. As indicated in the above table, the amount reported in the broad [REDACTED – CONFIDENTIAL INFORMATION].

130. Although the Guidance does not quantify what percentage constitutes “significant”, the TRA's exporter's questionnaire does require LiuGong to provide purchase information for the raw materials that account for >5% of the total cost to make and sale. See the excerpt below from the Exporter's Questionnaire issued to LiuGong:

D12 Raw material (RM) and major input purchases

1. Please complete Section D12 – RM purchased, Annex II detailing the RM and major input purchases accounting for >5% of the total cost to make and sell (>1% if energy for energy related costs) during the POI

Please provide an invoice and any supporting documents for two of your purchases stated within D12 – RM Purchased, Annex II. Use the box below to give an overview of any supporting documents provided.

131. LiuGong has only provided the purchase details for [REDACTED – CONFIDENTIAL INFORMATION] in the questionnaire response, because they are the only items individually account for >5% of the total cost to make and sale. Having requested the information provided in this way it is respectfully submitted that the TRA should compare the international benchmark price of [REDACTED – CONFIDENTIAL INFORMATION] against the purchase price actually paid by LiuGong, and provide for an upward adjustment, if necessary, for these materials only. The TRA should not do upward adjustments to any other raw materials used by LiuGong, because the TRA has never directed LiuGong to report the actual purchase price of those other materials, and there is no purchase data that can be compared with international benchmark data. If any interest party in this case (e.g. the Applicant) claims that any other raw material is much lower than international benchmark price due to Chinese government intervention in the domestic market, or if the TRA believes that any other raw material may be deemed "significant", then the TRA should request LiuGong to provide their actual purchase data and compare the price paid by LiuGong against the benchmark price to verify the data provided.

132. Also, LiuGong does not agree with the TRA's methodology of breakdown a complete material into steel and non-steel for price adjustments. Engine is engine. Reducer is reducer. It is true that engine and reducer are made of steel and non-steel parts, but LiuGong does not purchase those steel and non-steel parts and assemble the engine or reducer by itself. It purchases whole engines and reducers as complete parts (and not necessarily from PRC suppliers). The manufacturing of engines involves much more than raw materials. Many other

important factors such as technology, research, competition, brand etc would significantly impact on the sales price of engines. It means that, even if China steel price is 65% lower than the international price and all the other non-steel materials are 100% lower than international price (which is certainly not the case), it does not necessarily mean that the engine or reducer produce using such steel or other materials would also be 100% cheaper than engines produced outside of China. Constructing the raw material prices in such a way would highly distort the price and calculate a wrong dumping margin. Engine prices should be compared with world engines of the same model. Reducer prices should be compared with world reducers of the same model.

133. Most importantly, the TRA has not disclosed to LiuGong the detailed data sets and worksheets it has relied upon in calculating the upward adjustment ratio. The TRA has indicated in the SEF that the steel and non-steel prices paid by LiuGong in China is compared with a benchmark price provided by JCB Brasil. However, JCB Brasil is an affiliate of the Applicant in this case, who has the intention of providing higher purchase prices to achieve a higher dumping margin. LiuGong hereby kindly requests the TRA disclose the detailed data sets used for such calculation. Without such data, LiuGong is put in a blackbox and is not able to know whether the materials used for the comparison is the same material used by LiuGong, which materials are used in the average calculation and which materials are not taken into account (given that LiuGong has hundreds of materials in the broad category), whether it is weighted average or simple average, etc. If JCB Brasil does not agree to disclose such data, then such data should not be treated as public data. The Guidance does direct the TRA to take into account "whether public data specific to relevant inputs is available" in order to determine which country should be used as a representative country for selecting the benchmark.

134. Under Regulation 14 of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 the TRA should take into account:

"4 (4)(a) whether and to what extent reliable information is made available to the TRA by overseas exporters in that country or territory at the time of selection".

135. Relying solely on pricing information from a single source creates a risk of unreliability in itself but when that data is not independent of the parties within the investigation it creates added concern regarding whether information can be relied upon. In accordance with Regulation 4(4)(a) the TRA should not have used the third country if there is not sufficient and significant reliable information upon which the calculations can be constructed. To compound matters the information has not been made available for scrutiny, which is unusual in an anti-dumping investigation and places those responding at a significant disadvantage. The TRA ought to have asked other Brazilian manufacturers such as Sany and XCMG to provide their data and to the extent they were unable to find any second or third party to provide information then the data ought to have been treated as unreliable and an alternative method, or country, identified for comparison. JCB Brasil, if it chooses to take part, ought to be required to make public its data provided and must submit a non-confidential version of that data in accordance with Regulation 45.

Target Price

136. Little is known about the Target Price but the TRA will be aware that in constructing it they ought to have regard to Regulation 30 (3) and exclude goods which are to be exported or Goods which are outside the scope, since a number of the costs of JCB will relate to Goods of other machines and should not simply be split equally to ensure fairness and reliability:

“The TRA must conduct its examination only by reference to data that relates to the production of the like goods in the United Kingdom which are not exported from the United Kingdom, but where data relating to the like goods cannot be separated from data relating to a wider category of goods, which includes the like goods, the TRA may use the data relating to that wider category of goods.”

Political considerations

137. The recommendation of the TRA in the SEF creates a political hot potato.

138. JCB and the family behind the company are hugely political and controversial. JCB and the Bamford family are amongst the most prolific conservative donors⁴⁶ and have been intertwined with politics in the UK for a number of years. Lord Bamford was made a life peer in 2013 and sits in the House of Lords. In particular in 2022 Former PM Boris Johnson received a donation worth £23,853 from JCB boss Anthony Bamford and his wife Carole to pay for wedding celebration costs. The donation covered the cost of hiring a marquee, Portaloos, waiting staff, flowers, a South African BBQ and an ice cream van. The venue of the party was the Bamford's Gloucestershire home⁴⁷. Shadow cabinet secretary Claire Coutinho took a £7,000 helicopter trip on Lord Bamford's private helicopter on 25th June 2024. Claire Coutinho also posed for pictures promoting Lord Bamford's personal £100m hydrogen engine project and accepted a £7,500 donation in September 2024 from JCB since losing power. In September 2023, a consortium led by Ryze Hydrogen, a company owned by Bamford's son Jo – heir to the family fortune and a director of JCB's holding company – won £3.2m from Coutinho's department to provide hydrogen refuelling to construction sites. JCB has a business relationship with Ryze, jointly signing a multibillion-pound deal with an Australian mining company to supply green hydrogen to the UK. In December 2023, a project by Hygen, another company owned by Jo Bamford, was one of 11 granted a slice of £90m in government grants from the Net Zero Hydrogen Fund⁴⁸.

139. JCB has also faced public scrutiny over its commercial endeavours in Israel. In a UN report⁴⁹ (24 February - 20 March 2020, Agenda items 2 and 7, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Human rights situation in Palestine and other occupied Arab territories) J.C.B Excavators were one of 122 companies was accused of being “involved” in the “supply of equipment and materials” that facilitated the construction of Israeli settlements in the occupied West Bank. JCB has long faced allegations over its links to

⁴⁶ Annex 2 - Political donations

⁴⁷ [JCB boss pays for Boris Johnson's wedding toilets and food - BBC News](#)

⁴⁸ [Tory former energy secretary facing conflict of interest claim over JCB owner links | Conservatives | The Guardian](#)

⁴⁹ Annex 3 – UN Report- Advanced Unedited Version

settlements in the West Bank: the Israeli military has been photographed using its machines to demolish Palestinian homes since at least 2006. Amnesty International describes the company as a “key supplier of machinery used in this systematic violation of human rights,” adding that it has “failed to take effective action”⁵⁰. JCB has rejected claims that it contributes to human rights abuses in the West Bank. But both a UK trade watchdog and the director of the UK charity Lawyers for Palestinian Human Rights say JCB is failing to do due diligence on who buys and uses its kit⁵¹.

140. Furthermore, JCB has a structure which sees all of its profits offshored. The complaint from JCB is not that they don’t make profit and therefore can’t afford to raise the wages of UK staff or support UK industry. Quite the opposite it is simply that it wants to put up prices in the UK industry (to keep up with inflation and export to other, unknown, countries) and increase its profits. JCB acknowledges that during the POI it remained profitable. Increasing the profits will simply increase the funds to be offshored. JCB UK’s ultimate holding company appears to be JCB Group Holdings SARL, a Swiss company⁵². It is understood Lord Bamford’s fortune offshore is around \$6 billion⁵³. The effect will actually see UK jobs lost, not least at the likes of LGUK, and industries such as construction, waste and forestry put under significant further costs and risks.

141. Any politician who awards the tariff based solely on an application by JCB, the entire UK market taken as being JCB and constructed values fed to it by JCB faces a considerable political and public backlash. Imposing such punitive tariffs risks creating a trade war with PRC, particularly where many of the findings of the TRA are generalised against PRC, including in relation to state influence which risks setting a precedent on any imports from PRC.

142. A finding such as this risks all out trade war with China and further manipulation by politically mobile companies who have a large domestic (UK) share. The Secretary of State is

⁵⁰ [JCB](#)

⁵¹ [Final Statement: Lawyers for Palestinian Human Rights complaint to UK NCP about JCB - GOV.UK](#)

⁵² [Bloomberg Billionaires Index - Anthony Bamford & family](#)

⁵³ [Billionaire Moves His Fortune to Switzerland from Caribbean](#)

reminded that under Regulation 76 he may reject the TRA's recommendation where he is satisfied that it is not in the public interest to accept the recommendation.