

Meeting Agenda – Investigation procedural and substantive issues still needing to be addressed for purposes of transparency, objectivity and adequacy of TRA final determinations

Need for SEF/PAD conclusions to be revisited to take into account/address:

1. “Contradictory SEF/PAD factual findings and (subsequent) PAD-referenced likelihood of further information being submitted in these regards and included in the SEF (e.g., re JCB profitability, productivity, employment)”

CCCME:

AD0047 SEF issued 25 November 2024

AD0047 PAD issued 20 December 2024 (PAD provides no indication of temporal/substantive relationship with SEF).

CCCME thus expressed (3 January 2025 “Comments on PAD”) its concerns about apparent SEF/PAD factual contradictions and need for 25 November SEF to be revised to take account of certain PAD factual findings (notably concerning JCB profitability), and potential new incoming market data as expressly referenced in the PAD. CCCME has received no clarifications in meantime, so important to address this procedural issue upfront in this meeting today.

TRA: Clarification on relationship between PAD and SEF?

Substantively, however, CCCME remains very concerned relating to the JCB profitability trend. Despite the PAD Table 18 showing losses in every year of the injury period, TRA highlights (recital 407 PAD) that the level of losses was substantially lower in the POI than at the beginning of the period, indicating that this trend would not be consistent with the TRA’s price suppression finding (recital 408). CCCME of course agrees with this PAD indication, but now we understand that we need to refer rather to the SEF Table 17 - which apparently does take into account updated JCB profitability data.

However, we noted that Table 17 SEF, first line, just like Table 18 PAD, still shows that the level of JCB losses in the POI was substantially lower (i.e., a 29% improvement) vis-a-vis the beginning of the injury period. (see **Annex 1** - NB: line 1 of Table 17 SEF is the typical trade remedy measure of profitability, expressed as the average net operating profit as % of sales turnover – see e.g., EU practice – **Annex 2**)

Therefore, consistent with the TRA’s own reasoning set out in the PAD, CCCME asserts that the continuous improvement of JCB’s average NOPAT margin over the injury period would indicate that the price suppression finding in SEF §H1.3.2 is not objectively founded. Further, the positive JCB profitability trend shown in the SEF, in addition to other primary injury indicators being strongly positive even when imports from China were increasing (i.e., JCB production +43%, sales volume +47%, sales values +63%, prices +14%), appear to clearly contradict the SEF findings of material injury (SEF

§G1.5). In the CCCME's view, the SEF injury findings are simply not supported by the evidence on record.

2. "AD0047 PAD indication (recital 337) that further review being undertaken to assess if (more reliable) HMRC data for purposes of assessing import trends and market shares can be secured based on origin" (But no reference or answer to this specific point in SEF.)

TRA: Clarification?

CCCME: If TRA has determined that more reliable HMRC customs data cannot be obtained for purposes of better assessing import trends (and thus also UK consumption) and market shares and thus resorts to the all-size inclusive 8-digit excavator code (84295210), CCCME re-asserts that more reliable expert secondary sources focusing on the UK crawler excavator market were made available to TRA for reference throughout these investigations and should have been utilised by the TRA for purposes of arriving at better reasoned and objective findings.

These secondary sources include both private independent expert reports which are susceptible to non-confidential disclosure but also publicly available UK Construction Equipment Association (CEA) reports which provide valuable insights on the development of the UK excavator market across the injury period.

Consistent with ADA case law guidance, these expert sources would also enable the TRA to provide appropriate non-confidential baseline values on critical market data like UK market consumption and market shares, rather than merely providing indexing across the injury period.

E.g., better information available on market share trends:

Based on independent UK market expert publications, CCCME in its initial comments provided market share indications within +or- 2% for each of the major excavator suppliers in the UK. Apparently JCB also provided extensive detailed market information based on expert reports (see JCB Comments on SEF, para. 23). While the expert report provided by the CCCME only concerned the first year of the injury period (2019), that report interestingly also specifies the JCB excavator market share development over the period 2015-2019. Those figures show already a [very significant] drop in JCB's UK market share from 2015 ([15-17]%) to 2019 ([10-12]%), this in a period when Chinese excavator presence in the UK market was effectively negligible – see **Annex 3 (Annex 3 is not provided in connection with this Public version of the CCCME Meeting Presentation because it comprises a print-out from a confidential independent UK excavator market expert report; in summary, that print-out confirms the mentioned very significant drop in JCB market share even before the injury analysis period of these TRA investigations of excavators from China).**

Conversely, the CCCME has calculated a much smaller JCB loss of market share across the injury period when Chinese exports were starting to grow (CCCME Comments on SEF, para. 31). That is, JCB market share drops 5 percentage points just prior to Chinese imports, but drops by a much smaller amount, 1-2%, when Chinese imports increase – these respective figures tend to seriously undercut the TRA’s SEF conclusions on Chinese causation.

In short, for purposes of necessary transparency on market share development, CCCME believes that it is essential for the TRA to use the available secondary sources and provide the respective market share figures in appropriate ranged (non-confidential form) absolute figures for all significant suppliers across the injury period. This is the only reasonable means to objectively assess the relevant market share trends.

3. “Factual evidence and arguments submitted by CCCME and other interested parties (e.g., availability of alternative more reliable (expert) UK excavator market information, scope of product concerned/like products, major disparities between UK and notably EU trade data, existence of higher volume/cheaper excavator exports from unreferenced third countries impacting non-attribution and price suppression findings) (i.e., TRA need to address interested party submissions per ADA Art 12.2.2).”

CCCME: This agenda point covers a number of investigation issues which the CCCME and other interested parties have addressed in detail and provided supporting evidence in their respective submissions during the AD/AS investigations. These CCCME and other interested party submissions are not addressed in the SEF.

In the CCCME’s view, vital amongst the injury/causation issues which the CCCME has raised (in successive submissions) and which needs to be addressed by the TRA is the impact of imports from S. Korea. Korean excavator producers have long been present in the UK market and with important market shares (see **Annex 4; Annex 4 is not provided in connection with this Public version of the CCCME Meeting Presentation because it comprises a print-out from a confidential independent UK excavator market expert report; in summary, the print-out shows a significant S. Korean excavator producer market share in the UK crawler excavator market already in the first year of the injury analysis period of these TRA investigations, indeed with a combined S. Korean market share equivalent to that of JCB**). CCCME understands that the TRA has been aware of the Korean excavator presence in the UK market since the start of these investigations (market data submitted by JCB in connection with its Application) and is surprised that the TRA did not look closely at these imports when assessing the HMRC OTS data regarding the impact of imports from third countries other than China. To the CCCME’s understanding, the HMRC OTS import volume and price data (**Annex 5**) as well as confirmatory ITC trade data point to the imports from S. Korea, not China, as the primary suspect for causation of any injury to the UK industry.

TRA: Clarification relating to treatment of imports from S. Korea?

In brief, the CCCME is vitally concerned that the TRA fully and objectively addresses the CCCME's and other interested parties' submissions on the above and related issues in the context of the TRA's final determinations – as required by the respective provisions and case law on the WTO ADA and SCM Agreements. To be clear, the investigating authority must provide, *inter alia*, “the reasons for acceptance or rejection of relevant arguments or claims made by the exporters and importers...” (ADA Article 12.2.2, SCM Article 22.5).

4. “Adequacy of TRA assertion that investigations’ non-confidential disclosures provide “appropriate context” for other interested parties. (SEF Recital 317)”

CCCME: It is unclear to the CCCME whether the TRA means by use of the word “appropriate” in Recital 317. However, the CCCME from its very first submissions in these investigations has strongly expressed its objections and cited supporting case law that the general absence of non-confidential disclosure concerning multiple key elements of these investigations has made these investigations insufficiently transparent for rights of defence purposes. The CCCME has even made multiple suggestions for how claimed confidential information might be adequately converted into reasonable non-confidential summary form.

Again, the CCCME does not want to recite all its arguments in this regard, but it would very much appreciate the TRA's reflections on why it believes that it has adequately ensured that CCCME and other interested parties have received appropriate non-confidential disclosure, e.g., concerning data from private expert publications or from parties' questionnaire replies.

TRA: ?

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The CCCME thanks the TRA for this Meeting and looks forward to any further interactions aimed at achieving adequately objective and reasoned final determinations.