

16 April 2025

Trade Remedies Authority
North Gate House
21-23 Valpy Street
Reading
Berkshire
RG1 1AF

via UK Trade Remedies Services

OPEN

Dear Mesdames,
Dear Sirs,

Re: AS0046 – Comments on Addendum to Statement of Essential Facts
Our client: JCB Heavy Products Limited ("Applicant")

We refer to the UK Trade Remedies Authority's ("**TRA**") addendum ("**Addendum**") to the Statement of Essential Facts ("**SEF**") in the captioned investigation, whereby the TRA invited interested parties to comment on the Addendum by 17 April 2025.¹ The Applicant hereby submits its comments.

The Applicant is disappointed with the TRA's findings, because they do not come close to offsetting the full amount of subsidisation that benefit Chinese producers of in-scope excavators ("**Excavators**"), such as Caterpillar (Xuzhou) Limited. At the very least, the Applicant considers that the TRA should:

- Correct its findings concerning subsidisation in line with the Applicant's comments on the SEF ("**SEF Comments**") (Section 1).²
- Correct its findings on two additional subsidy schemes identified in the Addendum and countervail these schemes (Section 2).

1. The TRA should correct its findings concerning subsidisation in line with the Applicant's earlier comments

1. The Applicant is concerned that the TRA did not correct its findings concerning subsidisation in line with the Applicant's SEF Comments.³ The Applicant raised two sets of concerns with the TRA's findings concerning subsidisation, which the Applicant reiterates in turn.

¹ AS0046: TRA, Addendum to Statement of Essential Facts, 10 April 2025.

² AS0046: Applicant, Comments on SEF, 9 January 2025.

³ AS0046: Applicant, Comments on SEF, 9 January 2025.

1.1 The TRA should investigate all countervailable subsidies

2. As the Applicant explained, the TRA is required to investigate all countervailable subsidies received by Chinese Excavator producers.⁴ The Addendum suggests that the TRA has not investigated all countervailable subsidies.
3. For example, the Addendum does not elaborate on the countervailability of value-added tax ("**VAT**") refunds for the export of Excavators produced by Caterpillar (Xuzhou) Limited, despite the fact that the Applicant demonstrated in its SEF Comments that this scheme is countervailable.⁵

1.2 The TRA should correct its findings on certain subsidy schemes

4. As the Applicant explained, the TRA should correct its findings on certain subsidy schemes.⁶ The Addendum indicates that the TRA has not done so.⁷ As a result, the TRA's findings in the Addendum (and in the SEF) concerning certain subsidy schemes are flawed. Specifically, the Applicant reiterates that the TRA should:⁸
 - As concerns preferential financing:
 - Use Türkiye or Brazil as the benchmark country to calculate the amount of subsidy from preferential financing.
 - Ensure that Caterpillar (Xuzhou) Limited (and the other Chinese exporting producers) disclosed all preferential financing and, if this is not the case, rely on facts available.
 - As concerns the land use tax exemption, countervail this subsidy.
 - As concerns the tax deduction for research and development costs, find that this scheme is specific and, as a result, countervail this scheme.
 - As concerns several VAT refund schemes, countervail these subsidies.
 - As concerns the provision of land use rights at less than adequate remuneration ("**LTAR**"), use Türkiye as the benchmark country to calculate the amount of subsidy.
 - As concerns the provision of energy at LTAR, use the electricity price in the U.S. for March 2024, adjusted for the period of investigation using the consumer price index, to calculate the amount of subsidy.
 - As concerns the provision of shipping and logistics services for LTAR, find that Chinese entities that provide such services to Chinese Excavator producers, such as Caterpillar (Xuzhou) Limited, are public bodies and/or private bodies entrusted and directed by the Government of China ("**GOC**") and, as such, countervail this subsidy scheme.

⁴ SEF Comments, Section 1.

⁵ SEF Comments, Section 2.2(c).

⁶ See SEF Comments, Section 2.

⁷ Addendum, paras. 15, 81, 86.

⁸ See *generally*, SEF Comments.

2. The TRA should correct its findings on additional subsidy schemes

5. In the Addendum, the TRA considered two additional subsidy schemes but did not countervail these schemes. These findings are based on errors in law and in fact.

2.1 The TRA should countervail the import tariff exemption

6. The TRA should correct its findings and find that the import tariff exemption ("**Import Tariff Exemption**") from which Caterpillar (Xuzhou) Limited benefits is specific and, consequently, countervail this subsidy scheme.
7. The TRA found that Caterpillar Group benefited from the Import Tariff Exemption.⁹ Concerning specificity, the TRA found that the scheme is applied specifically and is limited to certain industries.¹⁰ However, the TRA found that it could not identify the application process, and not determine whether the Import Tariff Exemption was in fact applied specifically within the meaning of Regulation 22 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**D&S Regulations**").¹¹
8. The TRA errs in law. Regulation 22(2) provides that the TRA must consider, among others, the following to determine whether a subsidy is specific:
- The subsidy is explicitly limited to certain enterprises or industries in terms of access, as per Regulation 22(2)(a); or
 - The subsidy is in fact applied in a specific manner, as per Regulation 22(2)(b).
9. The TRA is not obliged to consider both conditions. Since the TRA found that access to the Import Tariff Scheme is limited to certain industries likely to import listed goods,¹² it is irrelevant whether the scheme is in fact applied in a specific matter. In any event, the TRA found that the Import Tariff Exemption is in fact applied specifically.¹³
10. Further, the legal basis for the Import Tariff Exemption, i.e., the Announcement on the Exclusion of Market-based Procurement of Goods Subject to Additional Tariffs on the U.S. (as amended) ("**Announcement**"),¹⁴ does not outline a robust application process consistent with the requirements set out in Regulations 22(4) and (5). That is because, in sum, the Announcement provides that:
- An applicant should not only fill the application on the exclusion declaration system but also provide necessary explanations, such as the impact of the additional U.S. tariffs on the applicant.

The fact that an applicant needs to provide explanations based on which the decision whether to grant the Import Tariff Exemption will be made indicates that (1) the criteria for applying the scheme are not objective, clear or verifiable; (2) the terms are not strict; and (3) eligibility is not automatic.

- The tariff committee of the Chinese state council reviews the applications for the Import Tariff Exemption one by one and notifies the applicants of the results. This

⁹ Addendum, Sections B5.1.1 and B5.1.2.

¹⁰ Addendum, para. 66.

¹¹ Addendum, para. 67.

¹² Addendum, para. 65.

¹³ Addendum, para. 66.

¹⁴ SEF Comments, footnotes 4-8.

suggests that the tariff committee holds discretionary power in granting or rejecting applications.

11. It follows that, in line with Regulations 22(4) and (5), the criteria for access to the Import Tariff Exemption confirm that the scheme is specific.
12. The Applicant's position is confirmed by the fact that the TRA's finding creates a perverse incentive for foreign governments to administer subsidy schemes in opaque ways, so as to avoid findings of specificity. This cannot be right.

2.2 The TRA should further investigate the customs guarantee

13. The TRA should find that Chinese commercial banks that provide a customs guarantee ("**Custom Guarantee**") to Caterpillar (Xuzhou) Limited and/or its related entities are a foreign authority within the meaning of Regulation 20 of the D&S Regulations. On that basis, the TRA should further investigate the countervailability of this scheme.
14. The TRA found that, under the Customs Guarantee, Caterpillar (Xuzhou) Limited and/or its related entities purchase guarantees associated with the payment of VAT and customs duties from a commercial bank in China.¹⁵ The TRA found that it lacked evidence to determine whether such a bank was directed by the GOC.¹⁶
15. The TRA errs in law and in fact. As the Applicant has demonstrated, Chinese banks, including commercial banks, are foreign authorities within the meaning of Regulation 20 of D&S Regulations. That is because:¹⁷
 - Chinese banks, including commercial banks, must accept supervision from the GOC and are obliged to conduct lending under the guidance of the State's industrial policies.

As the TRA previously found, the GOC possesses and exercises authority to instruct commercial banks on their lending practices.¹⁸ As a consequence, commercial banks provide financing to Chinese companies, such as Caterpillar (Xuzhou) Limited, based on the GOC's instructions and guidance.

- The GOC controls the behaviour of Chinese banks, including commercial banks, as (1) members of the Chinese Communist Party ("**CCP**") occupy senior positions at Chinese banks; and (2) there are CCP committees within the governance structure of banks that influence banks' actions based on CCP and GOC policies; so that (3) ultimately Chinese banks "treat guiding policies from the GOC as mandatory directions."¹⁹
16. It follows that the TRA should further investigate whether the Customs Guarantee is a countervailable subsidy.

¹⁵ SEF Comments, para. 43.

¹⁶ Addendum, Section B2.2.

¹⁷ AS0046: Applicant, Application, Annex F.2.001, Section 3.2.1.2, 13 November 2023.

¹⁸ AS0022: TRA, Statement of Essential Facts, paras. 192, 194 and 203; *See also*, TS0018: TRA, Statement of Essential Facts, para. 89.

¹⁹ AS0046: Applicant, Application, Annex F.2.001, para. 53, 13 November 2023; *See also*, AS0022: TRA, Statement of Essential Facts, paras. 169-188; *See also*, TS0018: TRA, Statement of Essential Facts, para. 95.