

15 May 2024

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 interested parties' comments and questionnaires
Our client: JCB Heavy Products Limited ("Applicant")

We refer to the questionnaire responses and comments submitted in the captioned investigation ("**Investigation**") by the following interested parties:

- LiuGong and its related entities (together: "**LiuGong**").¹
- SANY and its related entities (together: "**SANY**").²
- Xuzhou Construction Machinery Group and its related entities (together: "**XCMG**").³
- Fox Group Equipment Sales ("**FGES**"), a UK dealer for LiuGong.
- The Government of China ("**GOC**").⁴
- The China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("**CCCME**").

In their questionnaire responses and comments, these interested parties make claims to which the Applicant hereby responds. The Applicant also takes this opportunity to comment on other developments in the public file of the Investigation. In sum, the Applicant submits that:

- As concerns the scope of the Investigation (Section 1), the Trade Remedies Authority ("**TRA**") should not exclude :
 - Excavators with an operating weight of at least 50 tons ("**T**") (Section 1.1).
 - Electric Excavators (Section 1.2).

¹ Entities include Liuzhou LiuGong Excavator Co., Ltd. ("**LiuGong Liuzhou**"), LiuGong Changzhou Machinery Co., Ltd., Guangxi LiuGong Machinery Co., Ltd., LiuGong Machinery Hongkong Co., Ltd., and LiuGong Machinery (UK) Limited ("**LiuGong UK**").

² Entities include SANY Heavy Machinery Limited ("**SANY Kunshan**"), SANY Heavy Machinery (UK) Limited ("**SANY UK**") and Shanghai SANY Heavy Machinery Co., Ltd.

³ Entities include XCMG Excavator Machinery Co., Ltd. ("**XCMG China**"), XCMG UK Sales and Services Limited ("**XCMG UK**"), XCMG European Sales and Services GmbH ("**XCMG EU**") and Xuzhou Construction Machinery Group Import & Export Co., Ltd.

⁴ This includes the central, provincial and municipal governments of the People's Republic of China, as well as state-owned enterprises and private enterprises entrusted and directed by the GOC.

- As concerns subsidisation (Section 2):
 - The TRA should treat Sunward Intelligent Equipment Co., Ltd. ("**Sunward**") as non-cooperating (Section 2.1).
 - There is clear evidence of subsidisation in the Chinese Excavator industry (Section 2.2).
 - The TRA should investigate closely LiuGong and SANY's denial that they benefited from subsidies for which prima facie evidence suggests otherwise (Section 2.3).
- As concerns injury and causation (Section 3):
 - The flood of Chinese imports is worse than expected (Section 3.1).
 - The injury suffered by the Applicant is caused by dumped and subsidized Chinese Excavator imports (Section 3.2).
- The TRA should not accept further comments from interested parties to avoid delaying the Investigation (Section 4).

1. Product scope of the Investigation

1.1 The TRA should keep ≥50T Excavators in scope

1. LiuGong, SANY and XCMG claim that ≥50T Excavators should be excluded from the scope of the Investigation.⁵ FGES also claims that ≥50T differ from <50T Excavators.⁶
2. As an initial point, the Chinese manufacturers' arguments about broad ranges of ≥50T Excavators are misleading.⁷ There are very few circumstances on the UK market in which a ≥50T Excavator is the most appropriate machine, and most – if not all – ≥50T Excavators sold on the UK market will have an operating weight rather close to ≥50T.
3. The question for present purposes is thus whether <50T and ≥50T Excavators compete on the UK market. As the Applicant explained, on the UK market, the end use of ≥50T and 30-50T Excavators is identical. As such, in almost all instances on the UK market, 30-50T Excavators, such as the Applicant's new 40T model 370X or its old 46T model JS500,⁸ compete with ≥50T Excavators, such as the SANY 50.1T model SY500H (Tier 4 & Stage V) or the XCMG 50.4T model XE490U.
4. Nothing in the Chinese manufacturers' submissions suggests otherwise. To the contrary, SANY acknowledges that there is competition between <50T and ≥50T Excavators.⁹ Similarly, XCMG UK's marketing materials suggest that the UK market for ≥50T Excavators is non-existent as its product range ends at an Excavator with an operating weight of 50T.¹⁰ LiuGong refers to a website that groups Excavators into <10T, 10-25T and >25T, again confirming that there is no separate UK market for ≥50T Excavators.¹¹
5. A closer look at Chinese manufacturers' product portfolio further confirms that <50T and ≥50T Excavators compete. LiuGong offers models with operating weights just below and

⁵ See, e.g., XCMG, AS0046: Exporter questionnaire, p. 9; SANY Kunshan, AS0046: Exporter questionnaire, pp. 12-13; LiuGong UK, AS0046: Importer questionnaire, pp. 9-11.

⁶ FGES, AS0046: Downstream industries questionnaire, pp. 8-9.

⁷ SANY Kunshan, AS0046: Exporter questionnaire, pp. 9-11.

⁸ JCB, 370X, **Annex 1**; JCB, JS500 Brochure, **Annex 2**.

⁹ SANY Kunshan, AS0046: Exporter questionnaire, pp. 12-13.

¹⁰ XCMG UK, Excavators, **Annex 3**.

¹¹ LiuGong UK, AS0046: Importer questionnaire, p. 10, referring to Volvo, 'Different Excavator Types, Sizes, and Purposes Explained 2021,' 25 July 2021, **Annex 4**.

just above the 50T threshold, with one model even straddling the 50T threshold depending on the specifications. SANY's portfolio includes an Excavator with an operating weight of 49.5T and one with an operating weight of 50.1T. XCMG offers an Excavator with an operating weight of 48.1T and one with an operating weight of 50.4T. **Table 1** below lists the said models and their operating weights.

Table 1 – Chinese Excavator operating weights around 50T¹²	
Excavator models	Operating weights
LiuGong 950E	47-49.8T
LiuGong 952E	48.7-51T
LiuGong 952E LL	55.8T
SANY SH500H	49.5T
SANY SY500H (Tier 4 & Stage V)	50.1T
SANY SY550HD	52T
XCMG XE490DK	48.1T
XXMG XE490U	50.4T

6. As **Table 1** demonstrates, excluding $\geq 50T$ Excavators from the scope of the Investigation would create a loophole for Chinese manufacturers to push customers to procure $\geq 50T$ Excavators instead of competing $< 50T$ Excavators. This would undermine the effectiveness of anti-dumping and anti-subsidy duties in remedying the injury suffered by the UK Excavator industry caused by imported Chinese Excavators.
7. For the same reason, there is no need to add an additional product control number ("**PCN**") for $\geq 50T$ Excavators, as SANY now claims.¹³ In this regard, SANY previously confirmed that it had "no comment" on the existing PCN structure,¹⁴ whereas it was clear from the (very simple) PCN structure in the Investigation that all $\geq 30T$ Excavators were grouped in a single PCN. SANY's comment is factually incorrect because $< 50T$ and $\geq 50T$ Excavators compete on the UK market, as explained above, as well as out of time.
8. For those reasons, the TRA should keep $\geq 50T$ Excavators in scope.
9. If the TRA were nonetheless to consider it appropriate to put in place an upper operating weight limit to delineate the scope of the Investigation, that limit should be set significantly higher than 50T in order to avoid the said loophole. In this regard, the Applicant notes that the other UK Excavator manufacturer, Komatsu UK Limited ("**Komatsu UK**") reports on its website that it "manufactures medium-size and large crawler excavators (17 to 70 tonnes)."¹⁵ An appropriate upper operating weight limit (if any) could thus be 75 or 80T.

¹² FGES, 'LiuGong 950E/952E/952E LL Excavator,' **Annex 5**; SANY, Large excavators, **Annex 6**; XCMG, Excavators, **Annex 7**.

¹³ Contrary to what SANY claims. See SANY Kunshan, AS0046: Exporter questionnaire, pp. 11-12.

¹⁴ SANY Kunshan, AS0046: Pre-sampling questionnaire, pp. 11-12..

¹⁵ Komatsu UK Ltd. (KUK), Homepage, **Annex 8**.

1.2 The TRA should keep electric Excavators in scope

10. LiuGong and SANY claim that electric Excavators should be excluded from the scope of the Investigation.¹⁶
11. It is undisputed that electric and internal combustion engine ("**ICE**") Excavators have the same basic physical characteristics and end uses. They (will) thus compete with otherwise similar ICE Excavators. For that reason alone, electric Excavators should remain in scope.
12. Further, while LiuGong's portfolio appears to include one electric Excavator model (the 922FE),¹⁷ this model is not available from LiuGong's EU/UK website.¹⁸ LiuGong confirmed that before and during the period of investigation ("**POI**"), it sold no electric Excavators on the UK market.¹⁹ Similarly, while there are some press reports of a SANY electric Excavator model (the SY215E), this model is not listed in SANY's global Excavator product portfolio or on SANY UK's website.²⁰ LiuGong and SANY's claim concerning electric Excavators is thus hypothetical and moot. This issue can, if an issue at all, be the subject of a future partial interim review.
13. *[Sensitive information removed – Applicant's confidential business information]*. Like LiuGong and SANY, the Applicant already offers a <10T electric excavator.²¹
14. In any event, EU and U.S. investigating authorities have already established that, and are currently investigating whether, Chinese manufacturers sell dumped and subsidized electric vehicles/machinery. In the EU, the European Commission concluded anti-dumping and anti-subsidy investigations on electric bicycles,²² whereas investigations on mobile access equipment ("**MAE**")²³ and battery electric vehicles²⁴ are ongoing. In the U.S., the Department of Commerce concluded anti-dumping and anti-subsidy

¹⁶ See, e.g., SANY Kunshan, AS0046: Exporter questionnaire, p. 11; LiuGong Liuzhou, AS0046: Pre-sampling questionnaire, p. 11; LiuGong Changzhou, AS0046: Exporter questionnaire, pp. 8, 19.

¹⁷ LiuGong, Excavators, 922FE, **Annex 9**.

¹⁸ LiuGong Europe, EV Machines, **Annex 10**.

¹⁹ LiuGong Changzhou, AS0046: Exporter questionnaire, p. 8.

²⁰ SANY, Medium excavators, **Annex 11**; SANY UK, Excavators, **Annex 12**.

²¹ JCB, 19C-IE, **Annex 13**.

²² Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China, OJ L 16, 18.1.2019, p. 108; Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China, OJ L 16, 18.1.2019, p. 5.

²³ Notice of initiation of an anti-dumping proceeding concerning imports of mobile access equipment (MAE), originating in the People's Republic of China C/2023/7504 OJ C, C/2023/783, 13.11.2023; Notice of initiation of an anti-subsidy proceeding concerning imports of mobile access equipment (MAE), originating in the People's Republic of China C/2024/1915 OJ C, C/2024/2362, 27.3.2024.

²⁴ Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China C/2023/6731 OJ C, C/2023/160, 4.10.2023.

investigations on MAE.²⁵ The EU and U.S. investigations on MAE concern LiuGong, SANY and XCMG.²⁶

15. In the said investigations, the EU and U.S. investigating authorities have established that Chinese manufacturers of electric vehicles/machinery benefit from unfair advantages up the battery chain.²⁷ Chinese Excavator manufacturers also benefit from the same unfair advantages.
16. Excluding electric Excavators (even before these machines are sold to the UK market) that undoubtedly compete with ICE Excavators would thus create a loophole and undermine the effectiveness of anti-dumping and anti-subsidy duties.
17. For those reasons, the TRA should keep electric Excavators in scope.

2. Subsidisation

2.1 The TRA should treat Sunward as non-cooperating

18. Sunward submitted a pre-sampling exporter questionnaire in which it reported that it had UK exports of Excavators during the POI.²⁸
19. As the TRA indicated that it does not intend to use sampling,²⁹ Sunward should have completed an exporter questionnaire. It appears from the public file that it did not.
20. For that reason, the TRA should treat Sunward as a non-cooperating Chinese manufacturer and subject it to the residual duty rate based on Regulation 38 of the Trade Remedies (Dumping and Subsidisation) Regulations 2019 ("**Regulations**").

2.2 There is clear evidence of subsidisation

21. The GOC claims that there is no evidence that Chinese Excavator manufacturers receive subsidies. In the GOC's view, the Applicant did not meet its burden of providing *prima facie* evidence and has instead cherry-picked information from annual reports.³⁰
22. The Applicant provided 71 pages of analysis and 142 appendices with supporting evidence, none of which is rebutted by the GOC.³¹ The GOC's claim that there is insufficient evidence on the record is thus baseless and the Applicant sees no need of repeating the evidence it has put on the record.
23. Further, the GOC's claim that the Applicant cherry-picked information from LiuGong and SANY's annual reports is perplexing: these annual reports are hard evidence that LiuGong and SANY received the said subsidies.

²⁵ Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination, 86 FR 12.10.2021, p. 70439; Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 87 FR, 22.02.2022, p. 9576.

²⁶ See, e.g., U.S.: Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Antidumping Duty Order, 87 FR, 14.04.2022, p. 22191; in the EU, XCMG and LiuGong are named in the anti-subsidy investigation (AS704) complaint request, **Annex 14**.

²⁷ See e.g., U.S.: Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, C-570-140, p. 49; EU: Regulation 2019/72, recitals 100-130.

²⁸ Sunward, AS0046: Pre-sampling questionnaire response.

²⁹ TRA, AS0046: Notification of sampling approach, p. 1.

³⁰ GOC, AS0046: Subsidy questionnaire, pp. 32-36.

³¹ JCB, AS0046: Application, Appendices F.2.001-F.2.143.

24. In this regard, the GOC also claims that the Excavator industry is not an "encouraged" industry and that it therefore does not receive significant GOC support.³² This claim is contradicted by the facts. As the Applicant has demonstrated, the applicable Chinese guidance catalogues list, among others, large-scale construction machinery, including hydraulic excavators, and agriculture machinery and equipment as encouraged industries.³³
25. Further, the GOC claims that several policies, including the 14th Five Year Plan ("**FYP14**"), are not binding.³⁴ This claim goes against the wording of the FYP14. As the European Commission noted in its updated 2024 Report on Significant Distortions in China, Part 19 of the FYP14, titled Strengthening Plan Implementation Assurance,³⁵ "outlines the binding nature of the plan, outlining the implementation modalities and calling upon all industries to ensure successful application" of the FYP14.³⁶
26. Similarly, the GOC claims that "only the Constitution, laws, administrative regulations and local regulations and rules constitute general legislation in China" and that policy measures are non-binding.³⁷ This attempt to downplay how Chinese rules and regulations work should be rejected. As the United States Trade Representative noted, "[n]ormative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals."³⁸
27. The Applicant also recalls that LiuGong and XCMG are GOC state-owned enterprises,³⁹ and notes that SANY has even publicly made clear that it, too, will implement the FYP14 and other "non-binding" Chinese rules and regulations.⁴⁰
28. Finally, the Applicant notes that the GOC raised a series of claims contesting that the subsidies it provides are countervailable subsidies.⁴¹ As the Applicant clearly met its burden of proof for the initiation of the present investigation and most of the GOC's other claims appear directed at the standard that the TRA will apply in evaluating the subsidies, the Applicant sees no merit in a detailed rebuttal of the GOC's comments. Instead, the Applicant will await the TRA's full investigation of the said subsidies and comment after the TRA's disclosure.
29. For those reasons, the TRA should reject the GOC and SANY's arguments that there is insufficient evidence of subsidisation.

³² GOC, AS0046: Comments, paras. 18-23.

³³ JCB, AS0046: Application, Appendix F.2.001.

³⁴ GOC, AS0046: Comments, para. 20; GOC, AS0046: Questionnaire response, p. 19. See also LiuGong Liuzhou, AD0047: Exporter questionnaire, pp. 45-46, 49-51.

³⁵ JCB, AS0046: Application, Appendix E.2.1.007.

³⁶ European Commission, 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations,' SWD(2024) 91 final, 10.4.2024, p. 80.

³⁷ GOC, AS0046: Comments, para. 85, p. 42.

³⁸ United States Trade Representative, '2022 Report to Congress on China's WTO Compliance,' February 2023 p. 59.

³⁹ JCB, AD0047: Application, p. 56 and Appendix E.2.001, para. 38 as concerns LiuGong; Financial Times, 'China state group says official meddling contributed to default wave,' 30 November 2020, **Annex 15**, as concerns XCMG.

⁴⁰ JCB, AD0047: Application, Appendix E.2.001, paras. 39-41.

⁴¹ See, generally, GOC, AS0046: Comments.

2.3 The TRA should investigate closely LiuGong and SANY's denial that they benefited from subsidies for which *prima facie* evidence suggests otherwise

30. LiuGong and SANY deny having benefited from subsidies for which the Applicant provided *prima facie* evidence suggesting that LiuGong and SANY did benefit from the said subsidies.
31. First, LiuGong acknowledges that it uses bank acceptance drafts but claims that "[t]his is not a type of subsidy."⁴²
32. As the Applicant has established, bank acceptance drafts are a type of subsidy.⁴³ There is precedent in which bank acceptance drafts in China have been found to be countervailable subsidies.⁴⁴
33. Second, LiuGong reported "not applicable" in the section of the subsidy questionnaire concerning tariff and VAT exemptions.⁴⁵ SANY also reported that it did not benefit from tariff and VAT exemptions.⁴⁶ At the same time, as SANY acknowledged, it is "a national practice" in China that "producers are exempt from VAT on imported raw materials."⁴⁷
34. In this regard, aside from verifying whether LiuGong and SANY benefited from import tariffs and VAT exemptions on imported equipment and technology and VAT refunds that benefit certain listed industries such as the Excavator industry, the TRA should also assess whether the VAT exemption reported by SANY (and from which LiuGong likely also benefits) is an export subsidy in the sense of item (i) to Annex I to the WTO Agreement on Subsidies and Countervailing Measures.⁴⁸
35. Third, LiuGong reported "not applicable" in the section of the subsidy questionnaire concerning other subsidies granted in special economic zones.⁴⁹
36. As the Applicant explained, LiuGong appears to be active in at least four special economic zones, and it is commonplace in special economic zones to provide countervailable subsidies.⁵⁰ LiuGong should explain in detail – at least to the TRA – how its presence in the special economic zones has not resulted in it receiving countervailable subsidies for Excavators.
37. For those reasons, the TRA should investigate closely LiuGong and SANY's denial that they benefited from subsidies for which *prima facie* evidence suggests otherwise.

⁴² See, e.g., LiuGong Liuzhou, AS0046: Exporter questionnaire, p. 33.

⁴³ JCB, AS0046: Application, Appendix F.2.001, Section 3.2.1.

⁴⁴ See, e.g., recitals 358-412 to Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China, OJ L 189, 15.6.2020, p. 1; recitals 317-356 to Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China, OJ L 458, 22.12.2021, p. 344.

⁴⁵ See, e.g., LiuGong Liuzhou, AS0046: Exporter questionnaire, pp. 36-37.

⁴⁶ See, e.g., SANY Kunshan, AS0046: Exporter questionnaire, p. 44.

⁴⁷ SANY Kunshan, AD0047: Exporter questionnaire, p. 34.

⁴⁸ See Regulation 93(4) of the Regulations.

⁴⁹ See, e.g., LiuGong Liuzhou, AS0046: Exporter questionnaire, p. 38.

⁵⁰ JCB, AS0046: Application, Appendix F.2.001, Section 6.

3. Injury and causation

3.1 The flood of Chinese imports is worse than expected

38. Information put on the record by the Chinese Excavator manufacturers confirms that the flood of Chinese Excavator imports is worse than expected.
39. Based on data from LiuGong, SANY, Sunward and XCMG,⁵¹ the actual number of Excavators imported into the UK during the POI is significantly higher than the [*Sensitive information removed – Copyrighted material, disclosure of which breach copyrights*] units reported in the Application. Instead, the number is somewhere between 462 and a whopping 613. This means, as set out in **Table 2** below, that the market share of Chinese Excavator manufacturers may have increased [*Sensitive information removed. From 323% as per the original estimate in the Application to 562% in the revised estimate*] in the POI. (This is a conservative estimate as it assumes that the total market size increased by as much as the additional Chinese Excavator sales. In reality, the additional Chinese Excavator sales very likely were at the expense of other manufacturers' sales.)

Table 2 – Market shares in the POI (based on volume) ⁵²		
Origin	Original market share estimate	Revised market share estimate
China	[<i>Sensitive information removed - Applicant's business data and copyrighted material, disclosure of which breach copyrights</i>]	
EU		
Japan		
Korea		
Komatsu UK		
U.S.		
JCB		

3.2 The injury suffered by the Applicant is caused by dumped and subsidized Chinese Excavator imports

40. The CCCME claims that there is no injury caused by Chinese Excavator imports because (a) the UK Excavator industry's sales and market share increased between 2019 and the POI and the increase in Chinese imports came at the expense of imports from third countries; and (b) the Applicant's investments increased between 2019 and POI.⁵³ LiuGong UK claims that injury was caused by other factors, such as Brexit and COVID-19.⁵⁴
41. These claims are baseless.⁵⁵

⁵¹ SANY Shanghai, AS0046: Pre-sampling questionnaire, p. 9; SANY Kunshan, Pre-sampling questionnaire, p. 9; LiuGong Liuzhou, AS0046: Pre-sampling questionnaire, p. 9; LiuGong Changzhou, AS0046: Pre-sampling questionnaire, p. 9; XCMG UK, AS0046: Pre-sampling questionnaire, p. 10.

⁵² JCB, AS0046: Application, Appendix G.1.001, updated to use 613 units for the POI.

⁵³ CCCME, AS0046: Contributor questionnaire, pp. 8-11.

⁵⁴ LiuGong UK, AS0046: Importer questionnaire, pp. 32-36.

⁵⁵ The CCCME also makes a series of generic, unsupported claims (e.g., that the Applicant's management decisions are a cause of injury or that the Applicant cannot represent the UK industry because of purported "strong ties" with Chinese manufacturers). These claims are entirely meritless.

42. First, as to the UK Excavator industry's sales and third country sales, the Applicant notes that it cannot be certain that all sales attributed to Komatsu UK are indeed of Excavators manufactured in the UK, as Komatsu UK is a subsidiary of the Japan-headquartered Komatsu, which also produces Excavators in Brazil, Germany, Italy, Japan, and the United States.
43. For the Applicant [*Sensitive information removed - Confidential information about the Applicant's market size*] the increase in its UK sales volumes was lower than the growth of the UK market. As a result, the Applicant lost market share despite dropping its prices to unsustainably low levels in order to try to avoid losing more sales to subsidised Chinese Excavator manufacturers who are aggressively dumping on the UK market.⁵⁶
44. As one SANY dealer aptly summarised how Chinese Excavators are priced, "SANY is distinguished due to its extremely low purchase price."⁵⁷ LiuGong even explicitly and brazenly acknowledges that it is selling below cost in order to increase UK sales:
- "In order to compete in the UK due to the market being behind inflation etc (see below) the Company sells some of its machines at a loss in order to remain within the market and/or attract new customers with a view of building up a long term relationship."⁵⁸
45. This unfair pricing strategy in what a LiuGong dealer in the UK confirms is a market where customers are "very price sensitive"⁵⁹ has allowed Chinese manufacturers to make significant inroads in the mature UK Excavator market at a very high pace, increasing sales by 676% and market share by 562% between 2019 and the POI.⁶⁰ It is clear from the record that they have no intention of slowing down.⁶¹
46. This increase stands in stark contrast to the imports from third countries. It is true, as the CCCME says,⁶² that imports from Japan increased by ~20% between 2019 and the POI. The Applicant has no evidence that Excavators from Japan – which have been a mainstay on the UK market for many years – are being dumped or that Japanese manufacturers receive significant government support. The unfair competition on the UK market stems from the injuriously low prices that Chinese manufacturers use to rapidly gain market share – a classic page from their playbook.
47. Second, the CCCME's myopic focus on investments is misguided. Investments are crucial to ensure that the Applicant continues to build top of class Excavators that meet the highest customer demand. [*Sensitive information removed - Confidential information about the Applicant's business*].
48. However, as the Applicant has demonstrated, it has not managed to return to profitability due to the abnormal price pressure from Chinese Excavator manufacturers. This price pressure becomes most clear in the 115% injury margin that the Applicant calculated, as it compares the actual cost of producing Excavators in the UK with the price at which subsidised Chinese Excavators are being dumped.⁶³

⁵⁶ JCB, AS0046: Application, Section G.1.

⁵⁷ JCB, AS0046: Application, Section G.1, p. 56.

⁵⁸ LiuGong UK, AS0046: Importer questionnaire, p. 28.

⁵⁹ FGES, AS0046: Downstream industries questionnaire, p. 9.

⁶⁰ Comparing market share [*Sensitive information removed. From 323% as per the original estimate in the Application to 562% in the revised estimate*] to 613 in the POI.

⁶¹ JCB, AS0046: Application, Section G.1.

⁶² CCCME, AS0046: Contributor questionnaire, pp. 9-10.

⁶³ JCB, AS0046: Application, Annex, Table 7.

49. Third, LiuGong UK's general references to purported other factors such as Brexit and COVID-19 all deny the root cause of the injury suffered by the Applicant, which is the flood of injuriously low-priced imports from China. As LiuGong UK itself stated, it sells below cost in order to build relationships and find new customers in the UK.⁶⁴ This unfair behaviour is precisely why the Applicant suffers injury.
50. For those reasons, the TRA should reject the CCCME and LiuGong UK's arguments that there is no injury caused by Chinese Excavator imports.

4. The TRA should not accept further comments to avoid delaying the Investigation

51. As a final point, the Applicant notes that several interested parties reserved the right to submit additional comments on various aspects of the Investigation. For instance, the CCCME repeatedly stated that it would provide further comments.⁶⁵
52. The Applicant notes that the TRA imposed deadlines to submit comments, which have now lapsed. These deadlines ensure that the TRA can complete the Investigation in a timely fashion.
53. For that reason, the TRA should reject and disregard any further, out-of-time comments.

5. Conclusion

54. In sum, the Applicant submits that:
- As concerns the scope of the Investigation, the TRA should:
 - Keep ≥50T Excavators in scope.
 - Keep Electric Excavators in scope
 - As concerns subsidisation, the TRA should:
 - Treat Sunward as non-cooperating and subject it to the residual duty amount.
 - Reject the GOC's arguments that there is insufficient evidence of subsidisation.
 - Investigate closely LiuGong and SANY's denial that they benefited from subsidies for which *prima facie* evidence suggests otherwise.
 - As concerns injury and causation:
 - The flood of Chinese imports is worse than expected.
 - The TRA should reject the CCCME's arguments that there is no injury caused by Chinese Excavator imports.
 - The TRA should reject and disregard any further, out-of-time comments to avoid delaying the Investigation.

* * *

⁶⁴ See above, para. 44.

⁶⁵ E.g., CCCME, AS0046: Contributor questionnaire, p. 10.