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NON-CONFIDENTIAL

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Subject: **AS0046 – Subsidy investigation into certain excavators imported into the United Kingdom from the People's Republic of China – Comments on the Statement of Essential Facts by the Sany Group**

Dear Madam, Sir,

In the context of the above-mentioned investigation, we refer to the Statement of Essential Facts ("SEF") of 12 December 2024, by which the essential facts and considerations on the basis of which the Trade Remedies Authority ("TRA") intends to recommend the imposition of countervailing duties ("CVD") were disclosed to our client, *i.e.*, Sany Heavy Machinery Ltd. ("Sany Kunshan"), Shanghai Sany Heavy Machinery Co., Ltd. ("Sany Shanghai"), and Sany Heavy Machinery (UK) Ltd. ("Sany UK"), collectively referred to as "the Sany Group". For the Sany Group, the established countervailing amount is 2.40% and the injury margin is 66.08%. Thus, the CVD rate proposed for the Sany Group is 2.40%.

We also refer to (i) your email of 12 December 2024, by which our client was provided with a non-confidential version of the TRA's subsidy calculations underpinning the TRA's findings in the SEF; and (ii) our comments filed on 16 December 2024 concerning the SEF published in the context of the parallel anti-dumping ("AD") investigation concerning imports of certain excavators from China (Case AD0047).

In these comments, the Sany Group will address two issues, namely:

1. The method for calculating the combined duty rate for Sany Kunshan and Sany Shanghai; and
2. The potential termination of the present investigation.

In addition, the Sany Group hereby refers to and incorporates by reference sections 1 and 4 of the comments on the AD SEF filed on 16 December 2024. Sections 1 and 4 of those comments address issues concerning (i) product scope and (ii) injury, which are equally relevant to the AS SEF but which will not be repeated here for the sake of conciseness.

1. Calculation of the combined duty rate for the Sany Group

The Sany Group respectfully submits that the calculation of the combined CVD rate for Sany Kunshan and Sany Shanghai – as provided in the first worksheet of the excel documents attached to the company specific disclosure documents – is flawed and should be revised.

The Sany Group understands that the TRA (i) calculated the subsidy margins for each company and each subsidy scheme separately by dividing the subsidy benefits by their respective turnovers for the product under consideration and (ii) subsequently summed up the results (in %) to arrive at a 2.40% combined duty rate. This approach, however, exaggerates the subsidy margin for the Sany Group and does not seem to comply with the methodology prescribed by Regulation 23(3) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

Indeed, as can be observed from **Annex 1 – [CONFIDENTIAL]** to these comments, the individual subsidy rates for Sany Kunshan and Sany Shanghai are [CONFIDENTIAL]% and [CONFIDENTIAL]% respectively ([CONFIDENTIAL]). However, the combined CVD rate for the Sany Group cannot be the *sum* of all rates calculated for the single entities part of that group, as it is not the group that exports the product concerned into the UK but rather the individual entities.

While the Sany Group does not deny that, to prevent circumvention of anti-dumping and countervailing duty rates, it is common practice in most jurisdictions to calculate one duty for the whole group, such a group-wide duty should be based on the weighted average of the dumping and subsidy rates found for the individual producers forming part of the group.

The Sany Group finds support for calculating a group-wide duty on the basis of the weighted average of the rates for the individual producers forming part of the group in Regulation 37(3) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 which provides that the "*non-sampled overseas exporter amount is the weighted average of the amounts determined for the overseas exporters in the sample*". In other words, the applicable duty rate to non-sampled companies is not the sum of the individual duty rates of the sampled companies but, rather, the weighted average of these rates.

That the group-wide rate cannot simply be the sum of the individual duty rates is illustrated by the following example. Consider two companies, *i.e.*, Company A and Company B. Company A received a subsidy of 100 and has a turnover of 10,000. Company B received a subsidy of 150 and has a turnover of 20,000. The subsidy margin for company A would be 1.00%. The subsidy margin for Company B would be 0.75%. However, while the sum of these margins indeed yields 1.75%, this methodology misrepresents the aggregate subsidy margin. The weighted average should, instead, be calculated by (i) summing up the subsidy benefits for each company; (ii) summing up the companies' respective turnovers for the product under consideration to obtain their consolidated turnover; and (iii) dividing the total subsidy benefits by the consolidated turnover, *i.e.*:

$$\text{Aggregate subsidy margin} = \frac{\text{Total subsidy benefits}}{\text{Consolidated turnover}} = \frac{100 + 150}{10,000 + 20,000} = 0.83\%$$

By the same token, the TRA should (i) sum up the "amount attributable to the goods concerned during the POI" of Sany Kunshan and Sany Shanghai and then (ii) divide the resulting figure by the combined "CIF value of the goods concerned in the POI", i.e.:

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Please kindly refer to **Annex 1** – [CONFIDENTIAL] for more detailed calculations (based on the TRA's own calculations).

Based on the above, the Sany Group respectfully submits that (i) the correct combined countervailing duty rate for the Sany Group is [CONFIDENTIAL]%, i.e., a rate corresponding to a "minimal" subsidy amount within the meaning of Regulation 2 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019; and (ii) such a low CVD rate should thus be disregarded, as done for the Liugong Group in the present investigation.¹

By imposing a duty of 2.40%, however, on both Sany Shanghai and Sany Kunshan, a countervailing duty is imposed in excess of these companies' individual amounts of subsidisation (i.e. [CONFIDENTIAL]% and [CONFIDENTIAL]%, respectively), in violation of Article 19.2 of the WTO SCM Agreement.

2. Termination of the present investigation may be warranted

Following from – and without prejudice to – the above, the Sany Group respectfully submits that the present investigation should be terminated pursuant to Regulation 64(1)(a) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019.

This is because – (i) assuming that the Liugong Group's CVD rate as calculated by the TRA is correct and (ii) based on the understanding that [CONFIDENTIAL]² – the country-wide weighted average subsidy amount should be minimal, i.e., below 2%.

We thank you for your consideration of these comments.

Please do not hesitate to contact us should you have any questions and/or comments.

Yours faithfully,

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¹ Case AS0046 - Certain excavators from China, Statement of Essential Facts, paras. 628, 639, 821 and Tables 32 and 36.

² This understanding is based on the sales data provided by the Sany Group as Annex 3 to the AD SEF Comments filed on 16 December 2024, hereby attached for reference as **Annex 2** – [CONFIDENTIAL].