

NON-CONFIDENTIAL

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17 April 2025

Our client: Caterpillar Xuzhou Ltd ("CXL")

Dear Madam,
Dear Sir,

Re: AD0047 – Certain excavators from China – Comments on the Dumping and Injury Margin Disclosure

- (1) On 10 April 2025 the Trade Remedies Authority (“TRA”) disclosed dumping and injury margin calculations for CXL. On the same date TRA issued an Addendum to the Statement of Essential Facts for AD0047 (“Addendum”) that describes the methodology used by the TRA when making its findings. Based on the dumping margin of 37.24% and injury margin of 28.37%, the TRA set for CXL a duty amount of 28.37%.
- (2) CXL regrets the TRA’s conclusion that imports into the UK of excavators manufactured by CXL were made at dumped and injurious prices. Through the present comments CXL demonstrates that the TRA’s injury and dumping margin calculations are incorrect in a number of respects. CXL believes that a proper assessment of its injury and dumping margins should result in the duty amount of 0%.
- (3) These comments are without prejudice to CXL’s principled position that the truncated timetable of the investigation into individual dumping duty rate for CXL did not allow the company to fully exercise its rights of defence and had the result that the process was unfair. CXL reserves all its rights in relation to this process, including its rights to initiate a legal challenge.

1. CXL Imports Did Not Undersell JCB Target Price

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- (4) CXL has identified three issues with regard to the injury margin calculation that, if corrected, based on the disclosure as made to CXL, should result in the [CONFIDENTIAL – negative]% injury margin and thus in a zero dumping duty for CXL.
- (5) First, paragraph 53 of the Addendum mentions that "*the methodology for calculating the landed price remains the same as that used in the SEF – described in Section G4.2*". Section G4.2 of the SEF, at paragraph 506, provides in turn that "*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*".
- (6) In its injury margin calculations, as disclosed to Caterpillar, the TRA fails to equate the landed price for the CIF import price plus any relevant costs. Instead, without explanation, TRA [CONFIDENTIAL].¹ The TRA thus significantly understates the landed price and incorrectly inflates the injury margin.
- (7) CXL considers that this approach to determine its landed price is based on errors of law and fact. As a matter of law the CIF component of the landed price that TRA uses in the injury margin calculation should be the same as the actual CIF import price of relevant goods when they arrived at the UK port during the investigation period. A reference to the CIF UK port delivery terms means that such price should include the value of the product (“cost”) as well as delivery charges (“insurance” and “freight”) that are reflected in the actual price set at the CIF UK port delivery terms. Given that the CIF UK port transaction value is used for the purpose of customs valuation and is a basis for VAT and customs duty charges (including dumping amounts), UK legislation prohibits any adjustments to the customs values set using the valuation method 1 (“transaction value”) for the amount of discounts that are not legally valid at the point of importation:

Discounts

*These can only be left out if they relate to the imported goods being valued and there’s a valid contractual entitlement to the discount at the actual time for valuation.*²

- (8) Furthermore, while the UK legislation provides for a possibility to deduct delivery costs in the UK, it does not provide for a possibility to deduct any notional credit costs, such as a notional cost of credit to an unrelated customers resulting out of delayed payment terms.³
- (9) As a result, there exists no legal basis for the adjustment that TRA made with regard to the CXL landed price for [CONFIDENTIAL], and the UK legislation in fact explicitly prohibits any such deductions from the customs value and thus from the CIF UK port transaction value. As CXL explained during the verification with regard to its rebates policy, [CONFIDENTIAL].⁴ Even more, as discussed, there are instances where [CONFIDENTIAL].⁵

¹ See data in column “CIF value in accounting currency” and “CIF UK border import value (£)” in tab “Exporter Data” of file “AD0047 - Injury Margin Calculator – CATERPILLAR” and details of calculations for CIF Value in columns “CIF Total” in tab “Export Questionnaire Data” of file “Dumping Calculation - The Caterpillar Group”.

² <https://www.gov.uk/guidance/valuing-imported-goods-using-method-1-transaction-value#items-you-may-leave-out-of-the-customs-value>

³ Id. The rules allow downward adjustments of the transaction value for: Delivery costs in the UK, UK duties or taxes, **Earned** Quantity or trade discounts, Cash and early settlement discounts, Dividends, Marketing activities related to the imported goods, Buying commission, **Actual** Interest charges, Rights of reproduction, Post-importation work and Management fees.

⁴ In particular, during the Verification CXL explained that at the moment of sale [CONFIDENTIAL].

⁵ See for example [CONFIDENTIAL].

- (10) As a matter of fact, CXL demonstrated in its questionnaire response⁶ as well as during the verification⁷ that [CONFIDENTIAL].
- (11) Importantly, if the TRA maintains its decision to deduct [CONFIDENTIAL] from the CXL landed price for the purpose of the injury margin calculation, CXL will be effectively paying a dumping duty twice:
- [CONFIDENTIAL].
- (12) To avoid application of the dumping duty twice, TRA should take into account precisely the fact that due to the UK customs laws [CONFIDENTIAL].
- (13) Second, paragraph 501 of the SEF provides that the injury margin is calculated by expressing the total amount of underselling as a percentage of the total CIF import value of the goods concerned. In its injury margin calculations, as disclosed to Caterpillar, the TRA does not express the total amount of underselling as a percentage of the total CIF import value of the goods concerned. Instead, [CONFIDENTIAL]. The TRA thus significantly understates the CIF import value and inflates the injury margin.
- (14) CXL believes that the TRA incorrectly uses an adjusted CIF import value for the same reasons as discussed above with regard to incorrectly computed landed price. Namely, UK customs legislation does not allow to deduct from the CIF values [CONFIDENTIAL]. And no possibility to adjust customs values for notional - as opposed to actual - interest charges are possible. On that basis, full actual CIF values as declared to the UK customs by Finning in the investigation period should be used as a denominator when calculating the injury margin.
- (15) Importantly, the methodology to set the level of the dumping duty by dividing the landed price by the CIF value should mirror the methodology to calculate the amount of customs debt following the imposition of dumping duties. Since, as discussed above, under UK customs laws [CONFIDENTIAL].
- (16) Third, in its calculations, the TRA makes a clerical mistake when [CONFIDENTIAL]. As a result, the TRA overestimates the amount of rebates, underestimates the landed price and CIF value, and overstates the injury margin.
- (17) On the basis of the above, CXL respectfully requests the TRA to:
- [CONFIDENTIAL]

2. CXL Did Not Sell Excavators at Dumped Prices

- (18) CXL disagrees that it made sales to the UK at dumped prices.
- (19) First, CXL disagrees that because of a particular market situation its sales of excavators do not permit a proper comparison between the excavators destined for consumption in China and the goods concerned exported to the UK. As CXL demonstrated in its questionnaire response and through the documents provided in the course of the on-site verification:

⁶ CSARL Questionnaire Response states the following at S3.2.1: “[CONFIDENTIAL].”

⁷ UK import declarations containing data on customs value are submitted for all UK sales traces selected by the TRA for verification in verification exhibit VE-30.

- CXL is a [CONFIDENTIAL] sales of excavators by CXL on the same terms, regardless of the destination;⁸
 - CXL and CCI, its affiliated trading company in the domestic market, are not subject to any constraints, directive, or mandatory prices imposed by the Government of China;
 - CXL and CCI follow the same global pricing policy of Caterpillar that applies regardless of the sales market;⁹
 - CXL and CCI financial statement do not contain any reservations or notes relating to the Government of China interferences into the company's prices or costs;
 - CXL is not subsidized as established by the TRA in a parallel anti-subsidy investigation;
 - CXL is purely privately owned by Caterpillar Inc.; the Government of China does not own, directly or indirectly, any shares in CXL;
 - No State officials are present in the CXL or CCI Board of Directors or management bodies.
- (20) Paragraph 157 of the SEF finds the existence of a particular market situation (“PMS”) in the China’s excavator market by refence to the government influence on excavator prices reflecting non-commercial factors:
- On balance, the TRA has determined that there is evidence that government influence is present within both SOEs and private organisations, including the sampled exporters. The TRA has found evidence that government influence causes the price of excavators to reflect non-commercial factors. This is evidenced above through; article 19 of the Companies Law of the People's Republic of China, the 14th Five-Year Plan for Economic and Social Development (2021-2025), and the Made in China 2025 strategy.*
- (21) However, none of these laws, plans or strategies affect CXL pricing decisions and the Addendum does not demonstrate the contrary. Based on the evidence provided by CXL, CCI, CSSB and CSARL there is no basis to conclude that the alleged particular market situation does not permit a proper comparison between the sales of excavators destined for consumption in China and sales of excavators exported to the UK. Just to the contrary, CXL and its affiliates sell excavators in China and to the UK based on exact same pricing policy, without any State interference. CXL China and UK prices therefore are fully comparable and should be used as a basis for the CXL dumping margin calculation.
- (22) CXL therefore respectfully requests the TRA to re-examine applicability of the particular market situation evidence to the specific situation of CXL and conclude that in the specific situation of CXL either no such PMS exists or, regardless, that it does not preclude a proper comparison between the sales of excavators destined for consumption in China and sales of excavators exported to the UK. CXL believes the company-specific examination of the relevance of PMS is in line with Regulation 7(2)(b) of the Regulations. In fact, Regulations 7(2)(a) and 7(2)(c) of the Regulations are company-specific without the Regulations directly stating so. Or in the alternative, Regulation 7(2)(b) of the Regulations does not preclude a company-specific determination on the relevance of the PMS.

⁸ As reported in column [CONFIDENTIAL].

⁹ See Appendix 7 to Deficiency Letter Response of CXL submitted on 6 March 2025 which contains List Price. Also see pages 2 and 3 of verification exhibit VE-30 which contain information on pricing.

- (23) CXL notes that on the basis of dumping calculations that compare actual export prices to the UK with the actual domestic sales prices in China, CXL dumping margin is negative.
- (24) Second, CXL disagrees that a particular market situation in China exists with regard to the steel and non-steel inputs used in the production of excavators in China. Due to truncated timetable of the investigation into CXL, the company was not in the position to provide full evidence disproving the relevant allegations. Nevertheless, in CXL experience, the only reason between a difference in costs of excavators between China and Brazil, that the TRA uses as an analogue country, is (a) a much smaller economy of scale at the Brazil's manufacturing facilities and (b) inflated costs of inputs in Brazil due to the very high tariffs and various protectionist measures that are maintained due to the local content requirements in Brazil.
- (25) In any case, CXL reiterates that as demonstrated in the submission dated 1 April 2025:
- By means of an email dated 14 March 2025, CXL submitted data that allows to compare, on the same basis, the cost of the two identical excavator models, [CONFIDENTIAL].
 - CXL believes that this is the best possible evidence of what CXL's cost would be if adjusted to the cost of production in Brazil. It should therefore be used by the TRA in line with Regulation 13(2) of the Regulations to calculate CXL costs, regardless of the benchmarks or factors of production that the TRA uses for other Chinese exporters.
 - On that basis, a difference between material costs constitutes [CONFIDENTIAL].
- (26) CXL reiterates that, on the other hand, the SEF cost adjustment methodology does not meet requirements of Regulation 13(2) of the Regulations with regard to CXL and thus cannot be used for the purpose of the dumping margin calculations specifically for CXL. Addendum does not appear to address the argument and evidence provided by CXL in its 1 April 2025 submission. CXL respectfully requests the TRA to consider its submission and to adjust the calculations accordingly.
- (27) Third, CXL considers that the TRA incorrectly calculates a profit margin for the purpose of the construction of the normal value. Based on the details of the dumping margin calculation, TRA calculates the profit margin of [CONFIDENTIAL] based on the profit margin observed on sales of excavators in the ordinary course of trade in China pursuant to Regulation 12(2) of the Regulations. However, since the TRA already arrived at a conclusion that it is not appropriate to use the comparable price in China to determine the normal value of the goods concerned pursuant to Regulation 7(2) of the Regulations due to the existence of PMS, it is equally inappropriate to use domestic sales prices to calculate a reasonable profit margin. On that basis, TRA should make use of Regulation 12(3)(a) of the Regulation and determine the profit margin based on other reasonable means. CXL notes in this context that the only reasonable profit margin that the TRA determined in the SEF for excavator production is 11% referred to in paragraph 504 of the SEF as a profit margin that the petitioner considers reasonable in the absence of injury from Chinese imports. CXL suggests that the same 11% should be applied to set the reasonable profit margin for the domestic sales in China.
- (28) Fourth, same as for the injury margin, CXL reiterates that for the purpose of the dumping margin calculation, the denominator reflecting CIF import value should reflect actual sales prices from [CONFIDENTIAL] without any deduction for rebates and notional credit costs. Such CIF value should therefore be equal to [CONFIDENTIAL].

(29) Fifth, CXL kindly requests the TRA to consider the following issues regarding the accuracy of the dumping margin calculations:

- [CONFIDENTIAL].

Yours sincerely

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