

12 December 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: AD0047 – Comments on Statement of Essential Facts
Our client: JCB Heavy Products Limited ("Applicant")

We refer to the UK Trade Remedies Authority's ("**TRA**") Statement of Essential Facts ("**SEF**") in the captioned investigation and the TRA's accompanying invitation to interested parties to comment on the SEF by 16 December 2024.¹

The Applicant welcomes the recommendations the TRA made in the SEF. That said, the Applicant considers, as explained in these comments, that the TRA should revise certain findings from the SEF in the definitive findings. Specifically, the Applicant submits comments on the dumping determination (Section 1) and on injury and causation (Section 2). Finally, the Applicant notes two apparent clerical errors in the SEF (Section 3).

1. Comments on dumping

1. As concerns the TRA's dumping determination, the Applicant has the following comments:

- In constructing the normal value of certain excavators ("**Excavators**") originating in China, the TRA should:
 - Include all material inputs in its determination that there is a particular market situation ("**PMS**") in China and, accordingly, make the necessary adjustments (Section 1.1);
 - Compare labour costs in China to data from the Brazilian Institute of Geography and Statistics ("**IBGE**") and to costs at JCB do Brasil Limitada ("**JCB Brazil**") (Section 1.2);
 - Reconsider its findings on the finance costs of the sampled exporting producers (Section 1.3); and
 - Confirm that it used the adjusted cost to make to assess which domestic sales in China were profitable (Section 1.4).

¹ AD0047: TRA, Statement of Essential Facts, 25 November 2024.

- In constructing the export price of Chinese Excavators, the TRA should use the profit margin of unrelated importers of Excavators (Section 1.5).

1.1 Normal value: The TRA should include all material inputs in its determination that there is a PMS in China and, accordingly, make the necessary adjustments

2. As an initial point, the Applicant welcomes the TRA's finding that there is a PMS in the domestic Excavator market in China as the price of Excavators reflects non-commercial factors as a result of government influence and control in steel and key Excavator component costs.²
3. Although the TRA correctly made adjustments to the costs of certain raw materials of Excavators, the TRA excluded from its adjustments "all material inputs that were not excavator components," purportedly because "the allegation of the relevant PMS factor pertained only to" the Excavator industry.³
4. This is incorrect. In its application for an anti-dumping investigation ("**Application**"), the Applicant proved that state planning of the economy creates a horizontal distortion in China.⁴ In addition, the Applicant proved that the Chinese Excavator market as a whole, including all raw materials, is distorted by state intervention.⁵ This means that the Applicant met its burden of proof under Regulation 50(1) of the Dumping and Subsidies Regulations 2019 ("**D&S Regulations**") for all raw materials.⁶
5. It follows that the TRA should investigate whether a PMS exists for all raw materials, including inputs that the TRA did not consider to be "excavator components." As the Applicant has shown, this should lead the TRA to find that a PMS exists on inputs that were not considered "excavator components," and accordingly adjust the normal value of Chinese Excavators to account for the distortions on inputs that were not considered "excavator components."
6. At the very least, the TRA should identify the material inputs that it did not consider to be "excavator components" to permit the Applicant to provide further comments.

1.2 Normal value: The TRA should compare labour costs in China to IBGE data and to costs at JCB Brazil

7. The TRA determined that labour costs in China reflect non-commercial factors.⁷ The TRA then considered the cost of labour in Brazil. To that end, the TRA considered data from the International Labour Organisation's ("**ILO**") 'Continuous National Household Sample Survey' for 2022 and 2023. On that basis, the TRA found that labour costs in Brazil were lower than those of the sampled exporting producers, and, as such, the TRA did not adjust labour costs when constructing normal value.⁸
8. While the Applicant does not have visibility on the labour cost of the sampled exporting producers, the TRA should compare the labour cost of the sampled exporting producers to that reported by:

² SEF, paras. 123, 245.

³ SEF, para. 274, bullet 3.

⁴ Application, Appendix E.2.1.001, paras. 18-30.

⁵ Application, Appendix E.2.1.001, paras. 31-42 and 46-58.

⁶ Regulation 50(1), D&S Regulations.

⁷ SEF, paras. 183-193.

⁸ SEF, para. 278 and 279.

- The IBGE. In contrast to the ILO,⁹ the IBGE reports labour costs in Brazil specifically for the manufacturing of machines, equipment and equipment for transporting and lifting loads, also taking into account the size of the companies.¹⁰
 - JCB Brazil, as JCB Brazil's cost of labour was verified by the TRA in the context of JCB Brazil's cooperation as a third-country producer.
9. If the comparisons of the labour cost of the sampled exporting producers to that reported by the IBGE or JCB Brazil show that the labour cost of the sampled exporting producers is artificially low, the TRA should adjust the latter cost for the purpose of constructing the normal value of Chinese Excavators.
- 1.3 Normal value: The TRA should reconsider its finding on the finance costs of the sampled exporting producers**
10. The TRA found that while finance costs in China reflect non-commercial factors, "it has not determined that these costs are artificially low."¹¹
11. It is unclear on what basis the TRA made this finding, in particular as other investigating authorities consistently find that finance costs in China are significantly distorted by state intervention.¹²
12. On that basis, the TRA should reconsider its finding on the finance costs of the sampled exporting producers.
- 1.4 Normal value: The TRA should confirm that it used the adjusted cost to make to assess which domestic sales are profitable**
13. To construct the normal value, the TRA used the profit made and SG&A incurred by the sampled exporting producers on profitable Excavator sales on the Chinese market. To determine which sales were profitable, the TRA compared the sales price of the Excavators to their cost to make.¹³
14. The Applicant requests the TRA to confirm that it used the adjusted cost to make of Excavators – i.e., offsetting the artificially low costs for which the TRA made adjustments¹⁴ – to determine which domestic Excavator sales were profitable.
- 1.5 Export price: The TRA should use the profit margin of unrelated importers**
15. In constructing the export price, the TRA deducted the profit margins of the UK importer related to the respective sampled exporting producer. The TRA also looked at open-

⁹ See, e.g., recital 221 to Commission Implementing Regulation (EU) 2024/1915 of 11 July 2024 imposing a provisional anti-dumping duty on imports of mobile access equipment originating in the People's Republic of China, OJ L, 12.7.2024 ("**EU Regulation 2024/1915**").

¹⁰ **Annex 1**, Labour costs in Brazil. Source: IBGE, under industrial sector '28.22.'

¹¹ SEF, para. 259, bullet 2.

¹² See U.S. Department of Commerce, Decision Memorandum for the Preliminary Determination of Sales in the Less Than Fair Value Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, A-570-139, 24.09.2021, Section V.L.5, p. 27; European Commission, 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations,' SWD(2024) 91 final, 10.04.2024, Part I.

¹³ SEF, para. 291.

¹⁴ SEF, Section F.2.2.

source data to obtain a profit margin for a UK importer unrelated to the sampled exporting producers but found that it was difficult to obtain the necessary information.¹⁵

16. The Applicant notes that it already put on the record publicly available profit margins for unrelated UK importers, which it identified from UK import data.¹⁶ **Table 1** provides the most recent available data.

Importer	Financial year (year ending)	Turnover (GBP)	Profit before taxes (GBP)	Profit margin (%)
Phoenix Hire & Sales	March 2023	15,426,304	620,758	4.0%
William Keys & Sons	December 2023	73,608,318	4,783,500	6.5%
Taylor & Braithwaite	November 2023	16,505,715	384,256	2.3%
Weighted average				5.5%

17. **Table 1** demonstrates that the average profit margin of unrelated UK importers for 2022 and 2023 was 5.5%. The TRA should use this profit margin instead of the profit margin of UK importers related to the sampled exporting producers.
18. That is because the relationship between the sampled exporting producers and their related UK importers taints the related UK importers' profit margin.¹⁸ This is confirmed by publicly available information:
- SANY UK, which is related to the SANY group, reported profit margins of 1% for 2022 and 4% for 2023, with an average of 2%.¹⁹ This is significantly lower than the average of unrelated UK importers.
 - LiuGong UK, which is related to the LiuGong group, was lossmaking between 2019 and 2022.²⁰ The financial statements of LiuGong UK for 2023 are not yet available. This shows that LiuGong UK's data is tainted by its relationship with the LiuGong group.
19. It follows that the TRA should use the 5.5% profit margin reported by unrelated UK importers to construct the export price and not the profit margins from the UK importers related to the sampled exporting producers.

2. Comments on injury and causation

20. As concerns the TRA's injury and causation determination, the Applicant has the following comments:
- Market intelligence corroborates the TRA's determination that the import volume of dumped Chinese Excavators increased significantly (Section 2.1); and
 - The TRA should determine that there is significant price depression (Section 2.2).

¹⁵ SEF, para. 297.

¹⁶ Application, Table 5.

¹⁷ **Annex 2**, Financial statements of UK importers. Source: UK Companies House.

¹⁸ See e.g., EU Regulation 2024/1915, recitals 252 and 257; Recital 16 to Commission Implementing Regulation (EU) 2015/84 of 21 January 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in Indonesia, OJ L 15, p. 54.

¹⁹ **Annex 2**.

²⁰ **Annex 2**.

2.1 Market intelligence and sampled exporting producers' statements corroborate that the import volume of dumped Chinese Excavators increased significantly

21. The TRA used His Majesty's Revenue & Customs ("**HMRC**") Overseas Trade in Goods Statistics data and HMRC raw customs declarations as sources to analyse import volume and UK consumption. The TRA noted that this data does not fully depict the import volume of Excavators.²¹ Nonetheless, the TRA determined that UK imports of Chinese Excavators increased by 252% during the injury period.²²
22. The Applicant welcomes the TRA's determination, which confirms the flood of dumped Chinese Excavators sold on the UK market.
23. The Applicant notes that, to corroborate its determination, the TRA could refer to the independent market intelligence data provider on whose data the Applicant relied in the Application. That provider's data confirms that imports of Chinese Excavators multiplied during the injury period.²³
24. Similarly, the TRA could refer to the many statements of the sampled exporting producers that underline their increased exports to the UK.²⁴
- SANY's ultimate aim is to become a leader on the UK market and be the "largest supplier of excavators in the UK and Ireland."
 - For LiuGong, the UK is "an important market" and the Group has continued to "make big strides in the UK market." It has increased its overseas sales and since February 2023, its exports of large Excavators "soared by 500 percent year-on-year."
25. In sum, the TRA should consider corroborating its volume analysis with reference to independent market intelligence data and the many statements of the sampled exporting producers highlighted in the Application.

2.2 The TRA should determine that there is significant price depression

26. The TRA found that the UK industry's domestic sales price decreased by 5% between 2021/2022 and the period of investigation ("**POI**"). The TRA then determined that this decrease did not mean there was significant price depression.²⁵
27. The TRA should find that a 5% decrease in prices from 2021/2022 to the POI demonstrates significant price depression, in particular – as the TRA found – because the price decrease was clearly explained²⁶ by imports of Chinese Excavators at prices that significantly undercut the UK industry.²⁷
28. In this regard, the Application notes that the fact that prices increased slightly over the injury period does not mean there was no significant price depression. For instance:
- In *Biodiesel from Indonesia*, the average sales price of the domestic industry in the European Union ("**EU**") increased by 11% over the injury period but decreased by 5% in the investigation period. The European Commission found

²¹ SEF, paras. 315-327.

²² SEF, para. 132.

²³ Application, Section G.1.2, Table 14 and Figure 3; Application, Appendix G.1.001.

²⁴ Application, Section G.1.2.

²⁵ SEF, paras. 364-373.

²⁶ See Appellate Body Report, *China – GOES*, WT/DS414/AB/R, para. 136.

²⁷ SEF, paras. 373 and 375, Table 13.

significant price depression because import prices exercised downward pressure on the EU industry's prices.²⁸

- In *Fatty acid from Indonesia*, the average sales price of the EU industry increased by 25% over the injury period. The European Commission still found significant price depression.²⁹

29. In sum, TRA should determine that the price depression that it found is significant.

3. The TRA may wish to correct apparent clerical errors

30. The TRA may wish to correct the following clerical errors in the SEF:

- Table 5 at paragraph 277 reads "[a]djusted Brazilian steel benchmark price found to be 70-85% higher."³⁰ The word "steel" appears to be erroneous.
- Paragraphs 360 and 482 provide that the TRA found an average undercutting margin of 23.39% for the POI, but Table 11 reports an undercutting margin of 26.68% for the POI.³¹

4. Conclusion

31. In sum, the Applicant submits that the TRA should:

- As concerns dumping:
 - Include all raw materials, including inputs that were not considered "excavator components," in its PMS determination and, accordingly, make the necessary adjustments.
 - Compare the labour cost of the sampled exporting producers to that reported by IBGE and JCB Brazil and, if need be, make adjustments.
 - Reconsider its finding on the finance costs of the sampled exporting producers.
 - Confirm that it used the adjusted cost to make of Excavators to determine which domestic Excavator sales were profitable.
 - Use the 5.5% profit margin reported by unrelated UK importers to construct the export price.
- As concerns injury and causation:
 - Consider corroborating its volume analysis with reference to independent market intelligence data and the many statements of the sampled exporting producers.

²⁸ Recitals 324-328 to Commission Implementing Regulation (EU) 2019/1344 of 12 August 2019 imposing a provisional countervailing duty on imports of biodiesel originating in Indonesia, OJ L 212, 13/08/2019, p. 1.

²⁹ Recitals 204-219 and 236 to Commission Implementing Regulation (EU) 2023/111 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia, OJ L 18, 19.1.2023, p. 1.

³⁰ SEF, para. 277, Table 5.

³¹ The TRA may have meant that the average undercutting margin of 23.39% was for the entire injury period and not for the POI.

- Determine that there is significant price depression.
32. Finally, the TRA may wish to correct apparent clerical errors.

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