

23 January 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 – Response to comments by Caterpillar and SANY on Statement of Essential Facts
Our client: JCB Heavy Products Limited ("Applicant")

We refer to certain interested parties' comments on the UK Trade Remedies Authority's ("TRA") Statement of Essential Facts ("**SEF**") in the captioned investigation ("**Investigation**"), as uploaded to the public file on 20 January 2025.

As an initial point, the majority of the interested parties' comments pertain to the initiation of the Investigation, the existence and nature of subsidies received by Chinese excavator ("**Excavator**") manufacturers, the scope of the Investigation, and the TRA's findings on injury.¹ The Applicant has already commented on these aspects throughout this Investigation.²

That said, the Applicant considers it important to respond briefly to certain comments made by Caterpillar (Xuzhou) Ltd. ("**Caterpillar China**") (Section 1),³ and the SANY group ("**SANY**") (Section 2).⁴

1. Caterpillar China's comments are out of time and should be rejected

1. Caterpillar China came forward in January 2025, 14 months after the initiation of the Investigation. The Applicant wishes to respond to four comments made by Caterpillar China.
2. First, Caterpillar China argues that it should be sampled as an exporting producer and be given an opportunity to submit a questionnaire response to the TRA.⁵

¹ E.g., AS0046: SANY Group, Comments on the Statement of Essential Facts, 9 January 2025 ("**SANY SEF Comments**"); AS0046: China Chamber of Commerce for Import and Export of Machinery and Electronic Products, Comments on TRA Statement of Facts, 9 January 2024; Government of People's Republic of China, Comments on Statement of Essential Facts, 9 January 2025.

² E.g., AS0046: Applicant, Comments on China Chamber of Commerce for Import and Export of Machinery and Electronic Products' submission, 11 October 2024.

³ AS0046: Caterpillar (Xuzhou) Ltd., Comments by Caterpillar (Xuzhou) Ltd. on the Statement of Essential Facts, 13 January 2025 ("**Caterpillar SEF Comments**").

⁴ SANY SEF Comments.

⁵ Caterpillar SEF Comments, Sections 1 and 2.

3. Caterpillar China's requests are manifestly out of time and should be rejected as such. The TRA publicly announced the initiation of the Investigation on 16 November 2023,⁶ and is required to complete the Investigation by 16 May 2025.⁷
4. The completion of the Investigation cannot be endangered by Caterpillar China's failure to come forward at the start of the Investigation (in particular as Caterpillar is present in the UK, including as a member of the UK Construction Equipment Association,⁸ and has a "government affairs team in key global locations"⁹).
5. Interested parties are not entitled to participate in an anti-subsidy (or anti-dumping) investigation "as and when they choose."¹⁰ There is also no indefinite right for an interested party to make submissions to the authority:¹¹ this right ceases to exist at some point in an investigation.¹²
6. In the present case, Caterpillar China's comments were submitted far too late to still have a meaningful impact on the outcome of the Investigation. Instead of trying to derail the Investigation by requesting the TRA to still consider their comments now, Caterpillar China should consider using the appropriate procedures after this Investigation has been concluded.
7. Second, Caterpillar China argues that the TRA should assign a 0% anti-subsidy duty rate on its UK imports of Excavators originating in China, because (a) its self-evaluated subsidy margin is below *de minimis*; and (b) it did not undersell Excavators on the UK market.¹³ As noted, Caterpillar China's arguments are out of time and should be rejected for that reason alone.¹⁴
8. In any event, Caterpillar China's arguments fail. Caterpillar China did not file a pre-sampling questionnaire or a questionnaire. The TRA did not sample Caterpillar China or verify its data. The TRA cannot assign a 0% because Caterpillar China says so.
9. Third, Caterpillar China argues that the TRA should consider their position on the UK market for the purpose of the EIT.¹⁵ As noted, Caterpillar China's arguments are out of time and should be rejected for that reason alone.¹⁶
10. In any event, Caterpillar China's arguments omit the crucial point that Caterpillar is a global group that manufactures Excavators in multiple locations outside of China, most notably (but not limited to) the United States ("U.S.") and Brazil. UK customers can thus still purchase Caterpillar Excavators that are not subject to anti-subsidy (or anti-dumping) duties.
11. Fourth, Caterpillar China asks that anti-subsidy duties be imposed on UK imports of Excavators "dispatched from" China, and not on Excavators "originating in" China.¹⁷

⁶ See, e.g., TRA, Press release: TRA opens new investigations into excavators from China, 16 November 2023.

⁷ Art. 11.11, WTO Agreement on Subsidies and Countervailing Measures.

⁸ See Construction Equipment Association, Members, available at: <https://thecea.org.uk/member-network>.

⁹ See Caterpillar, Political Engagement: Advocacy Outside the U.S., available at:

<https://www.caterpillar.com/en/company/governance/political-engagement.html>.

¹⁰ Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, WT/DS268/AB/R, para. 241; Panel Report, *EU – Footwear (China)*, WT/DS405/R, para. 7.604.

¹¹ Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 241.

¹² Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 242.

¹³ Caterpillar SEF Comments, Section 5.

¹⁴ See above, para. 3.

¹⁵ Caterpillar SEF Comments, Section 6.

¹⁶ See above, para. 3.

¹⁷ Caterpillar SEF Comments, Section 7.

12. This proposal would result in such a large loophole in the anti-subsidy duties that the duties would become irrelevant. As the applicable law and the TRA's practice confirm, anti-subsidy duties are always imposed on imports based on the origin of the goods.¹⁸
- 2. SANY's comments on the TRA's anti-subsidy duty calculations should be rejected**
13. The TRA sampled SANY as an exporting producer and calculated an individual anti-subsidy duty rate for SANY at the group level.¹⁹ The Applicant wishes to respond to two comments made by SANY.
14. First, it appears that the TRA calculated individual subsidy margins of Sany Heavy Machinery and Shanghai Sany Heavy Machinery and summed up the individual margins to arrive at an anti-subsidy duty rate for SANY.²⁰
15. SANY takes issue with this approach and refers to the TRA's practice of calculating a weighted average anti-subsidy margin for non-sampled cooperating producers based on the individual anti-subsidy duty rates calculated for sampled cooperating producers.²¹
16. SANY errs. The manner in which anti-subsidy duty rates for non-sampled cooperating producers are calculated is inapposite to how the anti-subsidy margin for SANY is calculated: these are simply two different things.²² Further, there is nothing in UK law that obliges the TRA to follow SANY's methodology.²³ Instead, the TRA should uphold the calculation methodology used in the SEF.
17. Second, SANY notes that if the TRA revises its calculation of the anti-subsidy margin for SANY, the anti-subsidy duty rates for both SANY and LiuGong group would be *de minimis*.²⁴ On that basis, SANY requests the TRA to terminate the captioned Investigation.²⁵
18. In this regard, the Applicant reiterates its concerns with the TRA's determination in the SEF.²⁶ The anti-subsidy duty rates for SANY and LiuGong set out in the SEF appear to be tainted by errors and should be significantly increased.
19. Further, terminating the Investigation on the basis that SANY and LiuGong received *de minimis* subsidies risks undermining the credibility of the UK's anti-subsidy regime. In previous investigations, the TRA routinely imposed anti-subsidy duties:
- In *Optical fibre cables*, the anti-subsidy duty rates range from 10.6 to 11.8%.²⁷
 - In *Hot-rolled flat steel*, the duty rates range from 7.8 to 35.9%.²⁸

¹⁸ See e.g., Regulation 3 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**D&S Regulations**"); AS0022, TRA, Final Determination, 23 October 2023, para. 593; AS0020: TRA, Final Determination, 7 September 2023, para. 475; See by analogy, AD0021: TRA, Final Determination, 23 October 2023, para. 24; AD0012: TRA, Final Determination, 16 December 2022, para. 20.

¹⁹ SEF, Table 36.

²⁰ SANY SEF Comments, Section 1.

²¹ SANY SEF Comments, Section 1.

²² D&S Regulations, Regulation 37(3).

²³ D&S Regulations, Chapter 3.

²⁴ D&S Regulations, Regulation 2, "minimal," (c).

²⁵ SANY SEF Comments, Section 2.

²⁶ AS0046: Applicant, Comments on Statement of Essential Facts, 9 January 2025.

²⁷ AS0022: TRA, Final Determination, 23 October 2023, Table 33, p. 179.

²⁸ TS0018: TRA, Final Determination, 29 August 2023, Annex 1, p. 79.

- In *Glass fibre fabrics*, definitive duty rates range from 4.9 to 10.3%.²⁹
 - In *Tyres for buses or lorries*, the proposed definitive duty rates range up to 51.1%.³⁰
20. Similarly, in none of the European Union's ("EU") anti-subsidy measures currently in force did the EU find that a Chinese producer received only *de minimis* subsidies. Instead, the EU consistently imposed anti-subsidy duties:
- In *Aluminium converter foil*, the anti-subsidy duty rates range from 8.6 to 18.2%.³¹
 - In *Battery electric vehicles*, the duty rates range from 7.8 to 35.3%.³²
 - In *Coated fine paper*, the duty rates range from 4.0 to 12.0%.³³
 - In *Electric bicycles*, the duty rates range from 3.9 to 17.2%.³⁴
 - In *Glass fibre fabrics*, the duty rates range from 17.0 to 30.7%.³⁵
 - In *Glass fibre reinforcements*, the duty rates range from 4.9 to 10.3%.³⁶
 - In *Hot-rolled flat steel*, the duty rates range from 4.6 to 35.9%.³⁷
 - In *Organic coated steel*, the duty rates range from 12.7 to 44.7%.³⁸

²⁹ TS0009: TRA, Final Determination, 31 January 2023, Annex 1, p. 79.

³⁰ TS0036: TRA, Statement of Essential Facts, 27 August 2024, Table 43 and Annex 1, pp. 141-142.

³¹ Article 1(3) of 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.

³² Article 1(2) of Commission Implementing Regulation (EU) 2024/2754 of 29 October 2024 imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China, OJ L, 2024/2754, 29.10.2024.

³³ Article 1(2) of Commission Implementing Regulation (EU) 2023/1647 of 21 August 2023 imposing a definitive countervailing duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L 207, 22.8.2023, p. 1.

³⁴ Article 1(2) of 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.

³⁵ Article 1(2) of 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, OJ L 189, 15.6.2020, p. 1.

³⁶ Article 1(2) of Commission Implementing Regulation (EU) 2021/328 of 24 February 2021 imposing a definitive countervailing duty on imports of continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L 65, 25.2.2021, p. 1.

³⁷ Article 1(2) of Commission Implementing Regulation (EU) 2023/1123 of 7 June 2023 imposing a definitive countervailing duty on imports of certain hot-rolled flat products of iron, nonalloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council, O L 148, 8.6.2023, p. 84.

³⁸ Article 1(2) of Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L 116, 3.5.2019, p. 39.

- In *Optical fibre cables*, the duty rates range from 5.1 to 10.3%.³⁹
- In *Solar glass*, the duty rates range from 3.2 to 17.1%.⁴⁰
- In *Tyres for buses or lorries*, the definitive duty rates range from 3.8 to 57.3 EUR/unit.⁴¹

21. The Applicant finds it difficult to see how, in view of these consistent findings from the TRA and the EU, it is possible that SANY and LiuGong indeed received only *de minimis* subsidies. The Applicant is confident that the TRA's revisions of the SEF will lead to findings of significant subsidisation.

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³⁹ Article 1(2) of Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China, OJ L 12, 19.1.2022, p. 34.

⁴⁰ Article 1(2) of Commission Implementing Regulation (EU) 2020/1081 of 22 July 2020 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L 238, 23.7.2020, p. 43.

⁴¹ Article 1(2) to Commission Implementing Regulation (EU) 2025/61 of 15 January 2025 imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L, 2025/61, 16.1.2025.