

Peter Verhaeghe ◊ ●
Edwin Vermulst ◊ ●
Marco Slotboom ◊ ● ◻
Folkert Graafsma ◊ ●
Peter Kugel ◊ ● ·
Juhi Dion Sud ◊ ● ■
Joris Cornelis ◊ ●
Partners



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Your Ref: **Email:** [\[SENSITIVE\]@vvgb-law.com](mailto:[SENSITIVE]@vvgb-law.com) **Date:** 22 July 2024

Subject: AD0047 and AS0046 – Anti-dumping and anti-subsidy investigations concerning certain excavators imported into the United Kingdom from the People's Republic of China – Comments on proposed change to PCN structure by the Sany group

Dear Madam, Sir,

We refer to the Notes to the Files of 11 July 2024, by which the Trade Remedies Authority ("TRA") proposed to amend the Product Control Number ("PCN") structure to be used in the context of the present investigations by adding two new categories of excavators and invited interested parties to comment on the proposed amendment by today, 22 July 2024.

Our client – *i.e.*, Sany Heavy Machinery Ltd, Shanghai Sany Heavy Machinery Co. Ltd, and Sany Heavy Machinery (UK) Ltd, collectively referred to as the "Sany group" – welcomes the TRA's proposal to amend the PCN structure so as "*to better distinguish between larger types of excavators*" and is grateful for the opportunity to submit its comments in this regard.

The Sany group considers that the change in PCN structure proposed by the TRA is appropriate, and in fact warranted, in the context of the present investigations, as it will allow for a more detailed comparative analysis of the goods concerned and the like goods. The Sany group thus generally agrees with the TRA's proposal to add two categories of excavators to the existing PCN structure, namely: (i) category "XXL", designating excavators with an operating weight of at least 55 tonnes but no more than 80, and (ii) category "XXXL", designating excavators with an operating weight of 80 tonnes or more.

In connection to this proposed change in PCN structure, the Sany group would like to elaborate on its previous submission¹ that the scope of the present investigations should be limited to excavators with a maximum operating weight of 50 tonnes, while all other categories of excavators not produced by the sole UK cooperating producer – *i.e.*, JCB HEAVY PRODUCTS LTD ("JCB") –

¹ See: Sany group's narratives to the anti-dumping questionnaire responses available in the public file at <https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>; and Sany group's narratives to the anti-subsidy questionnaire responses available in the public file at <https://www.trade-remedies.service.gov.uk/public/case/AS0046/>.

should be excluded from the product scope. This is because, as explained in more detail below, (i) there is no legal or factual basis for investigating and imposing anti-dumping ("AD") and anti-subsidy ("AS") measures on product categories (a) not produced by the sole cooperating producer/the UK industry and (b) that can cause no injury to the UK industry; and (ii) the imposition of measures on imports of Chinese excavators with an operating weight of 50 tonnes or more would in any event run counter the UK interest.

1. No basis for investigating (and imposing measures on) imports of large excavators with an operating weight of \geq 50 tonnes

The Sany group recalls that the product scope of the present investigations is extremely broad and covers categories of excavators that are not produced by JCB, or more generally in the UK. Indeed, there is no evidence of production of excavators with an operating weight of 40 tonnes or more in the UK.

As noted by the Panel in *China – Autos (US)*, merely finding that the domestically produced goods are "like" the subject imported products for the purposes of Article 2.6 of the WTO Anti-Dumping Agreement and footnote 46 to the WTO Agreement on Subsidies and Countervailing Measures is inadequate for the purposes of assessing the effects of the subject imports on the domestic industry prices when there are significant differences between the basket of the subject imports and the basket of the domestically produced like goods,² as in the present cases.

Even as regards the causal link between the allegedly dumped/subsidised imports and the supposed injury to the domestic industry, as explained by the Appellate Body in several disputes, "[a]n examination of the competitive relationship between products is ... required so as to determine whether such products form part of the same market" and products may be considered to compete in the same market when they are "substitutable".³ This is especially relevant in cases that involve "a range of different product types that are distinguished by considerable price differences",⁴ such as the present cases.

Specifically, the present investigations cover "self-propelled track-laying (i.e., tracked) excavators with a 360° revolving superstructure and with an operating weight of 11,000 kg (i.e., 11 tons) or

² Panel Reports, *China – Autos (US)*, paras. 7.278-7.282.

³ Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262 referring to Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, paras. 1119-1120.

⁴ Appellate Body Reports, *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 5.262. See also: Panel Report, *China – Autos (US)*, para. 7.343 ("[w]e can readily envisage a scenario where domestic and imported goods are found to be 'like' ... but differentiation of goods within those two categories affects the competition between them in ways that have an impact on the assessment of causation"). See also: Panel Reports, *China – Autos (US)*, para. 7.281; *China – X-Ray Equipment*, para. 7.68 (relating to Article 3.2 of the ADA).

more".⁵ According to industry information, excavators can be classified into the following three main categories: (i) "mini" excavators with an operating weight of 5-10 tonnes; (ii) "standard" excavators with an operating weight of 11-45 tonnes; and (iii) "large" excavators with an operating weight of 45 tonnes or more.⁶ Therefore, to use the industry's terminology, the present investigations cover standard and large excavators.

However, JCB's product range is limited to mini and standard excavators with a maximum operating weight of 40 tonnes. JCB has indeed only recently, *i.e.*, on 24 March 2024, unveiled the launch of its "*largest excavator*" to date, namely the 35-40 tonnes 370X excavator described by the company as its "*biggest and most powerful model yet*".⁷ Furthermore, and contrary to what JCB asserts in the Application(s), its questionnaire responses and Comments on submissions and questionnaires,⁸ standard and large excavators are not substitutable and there is a clear dividing line between their respective market segments. This implies that (i) there is extremely limited competitive overlap between JCB's excavators with a maximum operating of 40 tonnes and the imported Chinese excavators with a minimum operating weight of 50 tonnes; and (ii) consequently, there can be no injury to JCB/the UK industry on account of imports of large excavators that JCB does not produce and sell.

⁵ TRA, Notice of Initiation of Investigation No. AD0047 of 15 November 2023, available at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/submission/7e8441ed-2b57-4c8e-90f9-9ea431ef2412/>>, p. 2; and TRA, Notice of Initiation of Investigation No. AS0046 of 15 November 2023, available at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/submission/cbe14c79-723d-457b-8f4a-6b7fbf8856ac/>>, p. 2.

⁶ See, for example: BOYA Equipment Bindoon, "How to choose the right excavator", available at <<https://boyaequip.com.au/news/how-choose-right-excavator>>; and Gregory Poole CAT, "Guide to different types and sized of excavators", available at: <<https://www.gregorypoole.com/guide-to-the-different-types-and-sizes-of-excavators/>>.

⁷ Lewis Tyler, "JCB launches its biggest excavator to date" (25 March 2024), available at <<https://www.constructionbriefing.com/news/jcb-launches-its-biggest-excavator-to-date/8036184.article>>. See also: JCB, "Introducing the all-new 370X: The largest excavator in the advanced JCB X Series Range", available at <<https://www.jcb.com/en-us/products/tracked%20excavators/370x>>.

⁸ See: JCB, Application AS0046, Section A.3.1, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>; JCB, Anti-Subsidy Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>; JCB, Comments on submissions and questionnaires, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>, Section 1.1; JCB, Application AD0047, Section A.3.1, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>; JCB, Anti-Dumping Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>; and JCB, Comments on submissions and questionnaires, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>, Section 1.1.

To elaborate, first, the differences between standard and large excavators can be readily established on the basis of their physical appearance, size and operating weight. As also admitted by JCB,⁹ this results in considerable price differences between standard and large excavators, as the latter category of excavators is bigger, heavier and necessarily more expensive.

Second, while JCB asserts that "*the end use of $\geq 50T$ and 30-50T Excavators on the UK market is exactly the same*" without providing any evidence in support of its assertion(s),¹⁰ readily available public information shows that large and standard excavators do not share the same uses and are not substitutable.¹¹ Large excavators with an operating weight of 45 tonnes or more "*are best suited for heavy-duty work*" and "*extreme digging on projects demanding the highest levels of power*", such as heavy-duty earthmoving, large-scale infrastructure projects, and extensive mining operations.¹² Large excavators are thus typically employed in projects requiring significant digging depths, substantial material handling capabilities, and robust performance in harsh conditions. By contrast, standard excavators with a maximum operating weight of 45 tonnes are suited for light-duty applications and are used in more conventional construction projects and urban settings. Therefore, the operational environments and project requirements for large excavators are very different from those of standard excavators.

Third, large excavators are not only more powerful than standard excavators, but they also require different logistical considerations for transportation and storage due to their size and weight. Indeed, "*[a]ll this power comes with its drawbacks. Because of their size, transportation on purpose-built trucks means running costs are higher than any other excavator on the market.*"¹³

These differences in terms of characteristics and uses – including size, weight, prices, power, functionality, deployment as well as operational and transport costs – imply that large and standard excavators do not compete on the UK market. Consequently, there can be no injury to the UK

⁹ See: JCB, Anti-Subsidy Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>, p. 11; and JCB, Anti-Dumping Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>, p. 11.

¹⁰ See: JCB, Anti-Subsidy Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>, p. 11 referring to Section A.3.1 of the AS0046 Application; JCB, Comments on submissions and questionnaires, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AS0046/>>, Section 1.1; JCB, Anti-Dumping Questionnaire (Producer), available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>, p. 11 referring to Section A.3.1 of the AD0047 Application; and JCB, Comments on submissions and questionnaires, available in the public file at <<https://www.trade-remedies.service.gov.uk/public/case/AD0047/#public-file>>, Section 1.1.

¹¹ See, for example: Gregory Poole CAT, "Guide to different types and sized of excavators", available at: <<https://www.gregorypoole.com/guide-to-the-different-types-and-sizes-of-excavators/>>; and BOYA Equipment Bindoon, "How to choose the right excavator", available at <<https://boyaequip.com.au/news/how-choose-right-excavator>>.

¹² *Ibid.*

¹³ BOYA Equipment Bindoon, "How to choose the right excavator", available at <<https://boyaequip.com.au/news/how-choose-right-excavator>>.

industry on account of imports of large excavators (which as noted above are not produced and sold by the UK industry).

Based on the aforesaid, the Sany group submits that: (i) the facts of the present cases justify the exclusion of excavators with an operating weight of 50 tonnes or more from the scope of the present investigations – or at the very least the exclusion of "XXL" and "XXXL" excavators, to use the updated PCN structure proposed by the TRA; and (ii) by contrast, the inclusion of these large excavators in the product scope may skew the assessment of injury or threat thereof to the UK industry because any injury allegedly suffered by JCB cannot be attributed to the Chinese imports of large excavators with an operating weight of 50 tonnes or more.

2. Any measure on imports of excavators with an operating weight of ≥ 50 tonnes would be against the UK interest

As a final remark, the Sany group submits that large excavators with an operating weight of 50 tonnes or more should be excluded from the scope of the present investigations because, in any event, the imposition of any duty on imports of such products from China would run counter the UK's economic interests.

First, since there is no production of excavators with an operating weight of 40 tonnes or more in the UK, the domestic demand for this category of excavators can only be met through imports.

Second, imposing measures on imports of large excavators from China will lead to higher costs for UK downstream businesses that rely on these imports, such as regional and national distribution and rental services. Should any such measures be imposed, UK downstream businesses will necessarily face substantial economic hurdles as well as potentially severe supply disruptions.

Third, the UK mining industry and other end users of large excavators (*e.g.*, construction companies involved in civil and commercial large-scale projects) will similarly be negatively impacted by any such measures. This is because their businesses revolve around heavy-duty work which cannot be accomplished through the employment of mini and standard excavators, which are just too small and not powerful enough to meet the needs of these industries. End users of large excavators are crucial for the UK economic growth, and the construction industry in particular is vital for the livelihood of UK nationals because it develops essential infrastructure as well as commercial and residential housing projects. The increased financial burden on the mining and construction industries will most likely result in higher costs for UK nationals, reduced competitiveness of UK businesses, and potential job losses within these sectors. It is thus in UK's economic interest to ensure that these key industries have access to cost-effective and reliable equipment to sustain the domestic economic growth and development.

In sum, imposing AD or AS measures on imports of Chinese excavators with an operating weight of 50 tonnes or more would neither help to protect the UK industry (because, as explained above, there can be no injury on account of such imports) nor benefit other UK businesses and UK nationals. To the contrary, any such measures would be detrimental to the UK as a whole because they would result in increased costs and also potentially in delays of critical construction projects, leading to broader economic repercussions.

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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