

9 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 – 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 9 January 2025.¹

In sum, the Applicant is concerned that the TRA's findings do not offset the full amount of subsidisation from which Chinese producers of certain excavators ("**Excavators**") benefit. Specifically, the Applicant considers that the TRA should revise certain findings and recommendations from the SEF in the definitive findings. In this regard, the Applicant submits comments on the subsidisation section in the SEF, specifically on:

- The burden on the TRA to investigate all countervailable subsidies (Section 1); and
- The TRA's determinations concerning certain specific subsidy schemes from which Chinese Excavator producers benefited (Section 2), namely:
 - Preferential financing (Section 2.1);
 - Preferential taxes (Section 2.2); and
 - The provision of goods and services for less than adequate remuneration ("**LTAR**") (Section 2.3).

1. The burden on the TRA to investigate all countervailable subsidies

1. The TRA limited its analysis of subsidies in the SEF on the initial evidence submitted by the Applicant.² This is incorrect.
2. The burden of proof on the Applicant for the Application was to submit as much information as is reasonably available to it.³ The Applicant met this burden.
3. That said, the Applicant cannot be and was not aware of all subsidies received by Chinese Excavator producers. For instance, when the Applicant filed the Application (in

¹ AS0046: TRA, Statement of Essential Facts, 12 December 2024.

² See e.g., SEF, para. 114.

³ Regulation 50, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**D&S Regulations**").

November 2023), the annual reports of the key Chinese Excavator producers for 2023 were not yet available. In the meantime, LiuGong published its 2023 annual report, which provides that, in 2023, LiuGong received value-added tax ("VAT") reductions and exemptions for small-scale taxpayers and VAT tax credits for enterprises in the advanced manufacturing industry.⁴

4. The TRA should investigate all subsidy schemes. This would align the TRA's practice with that of other investigating authorities. For example, the European Commission notes in each anti-subsidy investigation that it reserves the right to investigate "other relevant subsidies that may be revealed during the course of the investigation."⁵
5. Investigating all subsidy schemes revealed during the course of an investigation is necessary because the system of subsidisation in China is intentionally opaque. To avoid that this opacity unduly diminishes the remedial effect of anti-subsidy duties imposed on Chinese exports, the TRA should investigate all subsidy schemes from which Chinese Excavator producers benefited. Failure to do so effectively rewards the opacity of the system of subsidisation in China and rewards cooperating producers for not fully reporting all subsidies they received.
6. For that reason, the TRA should ensure that it investigates all subsidy schemes from which Chinese Excavator producers benefited during the period of investigation ("POI").

2. The TRA's findings concerning specific subsidy schemes

2.1 Preferential financing

(a) The TRA should use Türkiye or Brazil as the benchmark country for preferential financing

7. The Applicant welcomes the TRA's findings that loans and bank acceptance drafts ("BADs")⁶ are countervailable subsidies from which Chinese Excavator producers benefited.
8. At the same time, the Applicant is concerned with the very low amounts of subsidy calculated by the TRA for loans and BADs (0.61% for LiuGong and 1.17% for SANY). These amounts are significantly lower than expected. For context, in *Optical fibre cables from China*, the TRA calculated a subsidy amount for preferential financing of 9.18%.⁷
9. Based on the information in the SEF, it appears that the TRA calculated incredibly low amounts of subsidy for preferential financing *inter alia* because the TRA selected Indonesia as the benchmark country.⁸ However, Indonesia is not a suitable benchmark country. As in past investigations, the TRA should use Türkiye or, in the alternative, Brazil as the benchmark country.

⁴ LiuGong, 2023 Annual Report, **Annex 1**, p. 311 of the PDF.

⁵ See e.g., Section 3 to Notice of initiation of an anti-subsidy proceeding concerning imports of aluminium converter foil originating in the People's Republic of China, OJ.C 419, 4.12.2020, p. 32. It is the European Commission's standard practice to ask exporting producers whether they benefit from 'Other Subsidy Schemes'. For instance in *Mobile access equipment from China (AS704)*, the exporting producer questionnaire stated that: "In the course of this investigation the Commission will examine any other subsidies which conferred a benefit to your company, whether ad-hoc or in the context of a programme, by any public authority, including any public or private entity/agency under the control of the [Government of China]."

⁶ SEF, para. 155.

⁷ AS0022: TRA, Statement of Essential Facts, 20 June 2023.

⁸ SEF, paras. 344-346.

10. As an initial point, in *Optical fibre cables from China*,⁹ the TRA selected Türkiye as the benchmark country because both China and Türkiye:
 - Are classified as upper-middle income countries by the World Bank;
 - Are within the same World Bank lending group;¹⁰
 - Have a number of similar World Bank financial indicators related to banking systems;¹¹ and
 - Have active optical fibre cable manufacturing industries.
11. The TRA also noted that, when it investigated alleged preferential financing in *Ironing boards from Türkiye*, it did not identify any significant distortions in commercial financing in Türkiye.¹²
12. Applying the TRA's methodology to the present case, it is clear that the TRA should use Türkiye or Brazil but not Indonesia as the benchmark country.
13. First, Indonesia simply is not a suitable benchmark country. During the POI,¹³ Indonesia:
 - Was not classified as an upper-middle income country by the World Bank; and
 - Was not within the same World Bank lending group as China.
14. Thus, Indonesia does not meet the first and second criterion set out by the TRA to select a suitable benchmark country. In contrast, as the TRA found in *Optical fibre cables from China*, Türkiye met these criteria during the POI. Similarly, Brazil also met these criteria during the POI.¹⁴
15. Second, World Bank financial indicators relating to banking systems confirm that Türkiye or Brazil are a more suitable benchmark country than Indonesia. Türkiye and China share 18 indicators, whereas Brazil and China share 17.¹⁵ Indonesia and China only share 12.¹⁶
16. Thus, Türkiye and Brazil outperform Indonesia in the third criterion set out by the TRA to select a suitable benchmark country.
17. Third, Türkiye and Brazil have an active Excavator industry. Hidromek produces Excavators in Türkiye,¹⁷ and the Applicant produces Excavators in Brazil.¹⁸
18. Thus, Türkiye and Brazil also meet the fourth criterion set out by the TRA to select a suitable benchmark country.

⁹ AS0022: TRA, Statement of Essential Facts, 20 June 2023.

¹⁰ World Bank Country and Lending Groups, **Annex 2**.

¹¹ Comparison of World Bank financial indicators, **Annex 3**.

¹² AS0020: TRA, Statement of Essential Facts, 26 April 2023.

¹³ Indonesia gained the status of upper-middle income country only in July 2023, after the end of the POI. The World Bank in Indonesia, **Annex 4**.

¹⁴ Brazil is classified as an upper-middle income country by the World Bank. See World Bank, Brazil Country Partnership Framework, **Annex 5**. Similarly, Brazil is within the same World Bank lending group as China. See World Bank Country and Lending Groups, **Annex 2**.

¹⁵ Comparison of World Bank financial indicators, **Annex 3**.

¹⁶ Comparison of World Bank financial indicators, **Annex 3**.

¹⁷ Hidromek, Company profile, **Annex 6**.

¹⁸ The Applicant itself has a Brazilian production. JCB do Brasil Limitada registered as a Brazilian producer in AD0047.

19. For those reasons, the TRA should use Türkiye or Brazil as the benchmark country to calculate the amount of subsidy from preferential financing from which Chinese Excavator producers benefit.
20. To assist the TRA, the Applicant notes that:
- The lending interest rate for Türkiye is available from the Central Bank of Türkiye.¹⁹ Following the TRA's methodology, the average Turkish lending interest rate during the POI was 17.9%.²⁰
 - The lending interest rate for Brazil is available from the World Bank.²¹ The Applicant calculated the average between the lending rate in 2022 and in 2023. The average Brazilian lending interest rate during the POI was 41.5%.
- (b) The TRA should ensure that the Chinese Excavator producers disclosed all preferential financing**
21. In its findings that loans and BADs are countervailable subsidies, the TRA noted that LiuGong "provided the contract for the single loan it disclosed" and it "reported the use of a single loan during the POI," but was not able to provide the application for that loan.²²
22. The TRA's findings appear difficult to square with LiuGong's 2023 annual report, in which LiuGong reported having received the following loans:
- Short term loans worth ~RMB 7 billion in 2023 and ~RMB 5 billion in 2022.²³
 - Long term loans worth ~RMB 1.3 billion in 2023 and ~RMB 1.6 billion in 2022.²⁴
 - Credit loans worth ~RMB 1.5 billion in 2023 and ~RMB 1 billion in 2022.²⁵
 - Factored loans worth ~RMB 110 million in 2023 and ~RMB 35 million in 2022.²⁶
 - Loans on pledge worth ~RMB 50 million in 2023.²⁷
23. The TRA should ensure that the Chinese Excavator producers, in particular LiuGong, disclosed all preferential financing from which they benefited in the POI. If, as appears to have been the case, some preferential financing was not disclosed to the TRA, then the TRA should rely on facts available in accordance with Regulation 47(5) of the D&S Regulations. Absent better facts available, the TRA could use its findings from *Optical fibre cables from China* and impose a subsidy amount of 9.18%.²⁸ Doing so would bring the TRA's practice in line with that of other investigating authorities.²⁹
24. For those reasons, the TRA should ensure that the Chinese Excavator producers disclosed all preferential financing and, if this is not the case, rely on facts available.

¹⁹ AS0022: TRA, Statement of Essential Facts, para. 223, 20 June 2023. See Central Bank of Türkiye, Weighted Average Interest Rates for Banks' Loans, **Annex 7**.

²⁰ Central Bank of Türkiye, Weighted Average Interest Rates for Banks' Loans, **Annex 7**.

²¹ World Bank, Lending interest rate (%), **Annex 8**.

²² SEF, para. 195.

²³ LiuGong, 2023 Annual Report, **Annex 1**, p. 211.

²⁴ LiuGong, 2023 Annual Report, **Annex 1**, p. 211.

²⁵ LiuGong, 2023 Annual Report, **Annex 1**, p. 354.

²⁶ LiuGong, 2023 Annual Report, **Annex 1**, p. 354.

²⁷ LiuGong, 2023 Annual Report, **Annex 1**, p. 354.

²⁸ See above, para. 8.

²⁹ See AS0046: Application, Appendix F.2.027, Sections VIII.A and VIII.B.

2.2 Preferential taxes

(a) The TRA should countervail the land use tax exemptions from which Chinese Excavator producers benefited during the period of investigation

25. The TRA found that Chinese Excavator producers received land use tax exemptions during the POI. The TRA did not consider the countervailability of these exemptions because they were "short-term programmes that had ceased to operate."³⁰ This is incorrect.
26. Regulation 25(1) of the D&S Regulations provides that "the amount of the countervailable subsidy that is attributable to the [POI] is the total amount received in the [POI]." It is thus not relevant that the exemptions were "short-term programmes" or that they "had ceased to operate."
27. It follows that the TRA should countervail the land use tax exemption from which Chinese Excavator producers benefited during the POI.

(b) The TRA should find that the R&D tax deduction is specific

28. The TRA found that the Chinese research and development tax deduction ("**R&D Deduction**") is not specific within the meaning of Regulation 22 of the D&S Regulations.³¹ This is incorrect. The R&D Deduction is specific for (at least) three reasons.
29. First, as explained in the Application, the R&D Deduction is available only to eligible companies.³² The TRA has already found that some industries are excluded from the R&D Deduction.³³ This exclusion demonstrates that the R&D Deduction favours certain industries over other industries, which means that it is specific within the meaning of Regulation 22 of the D&S Regulations.³⁴
30. Second, as explained in the Application, the R&D Deduction is also specific because it is available only to companies that are engaged in R&D activities in high and new technology fields.³⁵ This means that the R&D Deduction can be availed only by a limited number of companies, which means that it is specific.
31. Third, the R&D Deduction policy does not impose objective criteria for receipt of the tax deduction. The policy states that the R&D activities refer to "systematic activities with clear goals that enterprises carry out continuously to acquire new scientific and technological knowledge, creatively apply new scientific and technological knowledge, or substantially improve technology, products (services), and processes."³⁶
32. Ambiguous terms such as "systematic activities," "creatively apply," and "substantially improve," without concrete definitions of these terms, highlight that the Government of China ("**GOC**") has significant discretion in determining what type of activities constitute

³⁰ SEF, para. 434.

³¹ SEF, paras. 415-417.

³² AS0046: Application, Appendix F.2.001, para. 116.

³³ AS0022: TRA, Optical fibre cables from China, Statement of Essential Facts, para. 150.

³⁴ See WTO Agreement on Subsidies and Countervailing Measures, footnote 2; Panel Report, *US – Softwood Lumber VII*, WT/DS533/R, para. 7.730.

³⁵ AS0046: Application, Appendix F.2.027, p. 54.

³⁶ GOC, The Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R&D Expenses, **Annex 9** (emphasis added).

R&D activities. Thus, eligibility to benefit from the R&D Deduction is not automatic and the criteria are not clearly spelt out.³⁷ Therefore, the subsidy scheme is specific.

33. Fourth, determining that R&D Deduction policy is specific would bring the TRA's practice in line with that of other investigating authorities.³⁸
34. For those reasons, the TRA should find that the R&D Deduction is specific and, as a result, countervail the R&D Deduction from which Chinese Excavator producers benefited during the POI.

(c) The TRA should countervail VAT refunds from which Chinese Excavator producers benefited

35. As concerns VAT refunds, the TRA found that:
- LiuGong received VAT refunds for industries that sell software products or embed these in equipment.³⁹
 - Chinese Excavator producers did not receive VAT refunds or exemptions for (a) production and living services industry; (b) imported equipment and technology; or (c) policy-based relocation.
36. However, the TRA did not investigate whether Chinese Excavator producers received the general or specific VAT refunds.⁴⁰
37. First, Chinese Excavator producers' 2023 annual reports (which were not available when the Application was filed) suggest that these producers benefited from the GOC's general export VAT refund. The GOC imposes an export VAT of 13% on Excavators (HS code 8429 52) and then refunds the export VAT.⁴¹ This export VAT refund is a countervailable subsidy, as it:
- Constitutes a financial contribution provided by the GOC.
 - Confers a benefit in the form of the 13% refund of export VAT.
 - Is specific to exports made under certain HS codes, including HS code 8429 52.
38. SANY reported a VAT deduction of ~RMB 1.8 million in 2023 and ~RMB 2.5 million in 2022.⁴² LiuGong reported VAT refundable on demand of ~RMB 13 million in 2023 and ~RMB 22 million in 2022.⁴³ This suggests that Chinese Excavator producers benefited from the export VAT refund during the POI.

³⁷ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, WT/DS379/AB/R, para. 367.

³⁸ AS0046: Application, Appendix F.2.027, p. 54; Recitals 329-333 to the Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, OJ L 146, 9.6.2017, p. 17.

³⁹ SEF, Section F.6.

⁴⁰ AS0046: Application, Appendix F.2.001, Section 4.2.1.

⁴¹ GOC, Transcustoms, **Annex 10**.

⁴² SANY Heavy Industry Company Limited, Annual Report 2023, **Annex 11**, p. 222 of the PDF. SANY Heavy Industry Company Limited seems to be the parent company of SANY Kunshan and Shanghai SANY.

⁴³ LiuGong, 2023 Annual Report, **Annex 1**, p. 381 of the PDF.

39. Second, the TRA did not investigate specific VAT refunds, such as the VAT refund for small-scale tax payers and VAT credits for enterprises in the advanced manufacturing industry. In its 2023 annual report (which was not available when the Application was filed), LiuGong reported benefiting from these refunds.⁴⁴
40. Third, the TRA noted that the Chinese Excavator producers did not receive VAT refunds for imported technology and equipment. However, SANY reported that it benefited from this subsidy in its questionnaire response. SANY stated that it imported inputs, which were used to produce Excavators that were exported. SANY received refunds of the VAT paid on these imports.⁴⁵ As a consequence, the TRA erred in finding that SANY did not receive VAT refunds for imported technology and equipment.
41. For those reasons, the TRA should countervail the VAT refunds from which Chinese Excavator producers benefited, including VAT refunds for exports, for small-scale taxpayers, for the advanced manufacturing industry, and for imported technology and equipment.

2.3 Provision of goods and services for LTAR

(a) The TRA should use Türkiye as the benchmark country for land use rights

42. The TRA found that Chinese Excavator producers benefit from land use rights provided at LTAR. To calculate the subsidy amount, the TRA used Indonesia as the benchmark country.⁴⁶
43. As explained above,⁴⁷ Indonesia is not a suitable benchmark country. Instead, the TRA should use Türkiye (as in *Optical fibre cables from China*)⁴⁸ or Brazil.
44. For that reason, the TRA should use Türkiye as the benchmark country to calculate the amount of subsidy from the provision of land use rights at LTAR from which Chinese Excavator producers benefit.
45. To assist the TRA, the Applicant provides in **Table 1** below the average industrial real estate prices per square meter in Türkiye for the POI. The average cost was EUR [70-100] or GBP [60-90] per m².⁴⁹

Table 1 – Cost of land use rights in Türkiye for POI (EUR/m ²) ⁵⁰					
	Q3 2022	Q4 2022	Q1 2023	Q2 2023	Average
Istanbul	[CONFIDENTIAL – Copyrighted material, the disclosure of which would be a breach of copyrights]				
Ankara					
Total average					[70-100]

(b) Provision of energy for LTAR

46. The TRA found that the provision of energy at LTAR is a countervailable subsidy and used the United States ("U.S.") as the benchmark country to calculate the amount of

⁴⁴ LiuGong, 2023 Annual Report, **Annex 1**, p. 311 of the PDF.

⁴⁵ AS0046: Shanghai SANY Heavy Machinery Co., Ltd., Questionnaire Response, Response to Section D.10.1.

⁴⁶ SEF, Section F8.5.1.

⁴⁷ See Section 2.1(a), above.

⁴⁸ AS022: TRA, *Optical fibre cables from China*, Final Determination, Section G6.6.1.

⁴⁹ Average exchange rate for the POI: 1 EUR = 0.86955 GBP. Source: European Central Bank.

⁵⁰ Statista, Cost of prime industrial real estate rent per year in Istanbul and Ankara in 3rd quarter 2021 and 1st quarter 2024, by city, **Annex 12**.

subsidy. In essence, the TRA found that electricity prices in the U.S. and China are similar, so that the amount of subsidy is zero.⁵¹ This is incorrect.

47. The TRA used World Bank data that was last updated in 2020.⁵² This data is outdated. More recent data confirms that the price of electricity in China is significantly lower than in the U.S.
48. Global Petrol Prices, a data provider regularly used by investigating authorities in trade defence investigations,⁵³ currently reports prices of electricity for industrial users for March 2024.⁵⁴ **Table 2** below shows that, adjusted for changes to the consumer price index ("**CPI**"), the electricity price in China was 38% lower than in the U.S. in the POI.

Table 2 – Electricity price in U.S. and China for POI (GBP/kWh)			
	U.S. ⁵⁵	China ⁵⁶	Δ
Energy prices	0.112	0.070	38%

49. For that reason, the TRA should use the electricity price in the U.S. for March 2024, adjusted for the POI using the CPI, to calculate the amount of subsidy from the provision of energy at LTAR from which Chinese Excavator producers benefit.

(c) Chinese entities that provide shipping and logistics services are public bodies and/or private bodies entrusted and directed by the GOC

50. The TRA found that the Chinese entities that provide shipping and logistics services to Chinese Excavator producers are not public bodies in the sense of Paragraph 3(4) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 ("**Taxation Act**"). Further, the TRA did not analyse whether these entities are private bodies entrusted or directed by the GOC in the sense of Regulation 20(e) of the D&S Regulations. The TRA reached this conclusion without contacting Chinese shipping and logistics providers to determine whether they are public bodies or private bodies entrusted and directed by the GOC (which the TRA did with Chinese banks).⁵⁷ This is incorrect.

⁵¹ SEF, Section F9.5.1.

⁵² World Bank, Ease of Doing Business, **Annex 13**.

⁵³ See, e.g., recital 83 to Commission Implementing Regulation (EU) 2024/819 of 8 March 2024 imposing a definitive anti-dumping duty on imports of certain corrosion resistant steels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, OJ L, 2024/819, 11.3.2024.

⁵⁴ Source: Global Petrol Prices, **Annex 14**.

⁵⁵ The electricity price in the U.S. in March 2024 was GBP 0.116 per kWh. The CPI adjustment from March 2024 to the POI is -3.87%, computed as follows:

- The CPI for March 2024 was 312.332.
- The CPI for July 2022 (start of the POI) was 296.276.
- The CPI for June 2023 (end of the POI) was 305.109.
- The average CPI for the POI was 300.693.
- The CPI for the POI was 3.87% lower than for March 2024.

Source for CPI: Trading Economics, available [here](#).

⁵⁶ The electricity price in China in March 2024 was GBP 0.069 per kWh. The CPI adjustment from March 2024 to the POI is 1.23%, computed as follows:

- The CPI for March 2024 was 100.1.
- The CPI for July 2022 (start of the POI) was 102.7.
- The CPI for June 2023 (end of the POI) was 100.0.
- The average CPI for the POI was 101.35.
- The CPI for the POI was 1.23% higher than for March 2024.

Source for CPI: MOFCOM, available [here](#).

⁵⁷ SEF, para. 273.

51. Evidence in the Application demonstrates that Chinese entities that provide shipping and logistics services are public bodies or private bodies entrusted and directed by the GOC.⁵⁸ This evidence contradicts the TRA's findings in the SEF. Further evidence confirms that Chinese shipping and logistics entities are public bodies or private bodies entrusted and directed by the GOC.
52. First, the GOC controls the entire Chinese shipping and logistics value chain. The maritime shipping industry directly participates in the pursuit, facilitation and support of the GOC's industrial policies promoting Chinese exports, such as "Going Out"⁵⁹ or Made in China 2025.⁶⁰ The intention of the GOC's interventions in the shipping and logistics value chain is to:
- "... relying on the national logistics hub, expand the international transportation routes of sea, air and rail, promote the construction of an international logistics service network that supports 'global procurement, global production and global sales,' and 'promote international logistics to reduce costs and increase efficiency'."*⁶¹
53. The GOC's control of the entire shipping and logistics value chain is evidenced by the fact that prices of certain railway bulk cargo, luggage freight rates, and port services such as ship entry and exit, berthing and departure, and port security are set by the GOC.⁶²
54. Second, key Chinese shipping, port management, domestic logistics and container suppliers are State-owned enterprises ("**SOEs**"). They are public bodies in the sense of Paragraph 3(4) of the Taxation Act as they possess, exercise and are vested with governmental authority. The GOC exercises meaningful control over SOEs in the shipping and logistics services industry and uses them to maintain the predominant role of the GOC.⁶³
55. As concerns shipping and port management firms,⁶⁴ out of 35 listed Chinese shipping and port management firms, only two were privately owned and the rest were SOEs.⁶⁵ For instance:
- China Ocean Shipping (Group) Company ("**COSCO**") is an SOE.⁶⁶ COSCO has several subsidiaries in the shipping and logistics industry under its corporate structure, such as Orient Overseas Container Line (Hong Kong), Shanghai Pan Asia Shipping, New Golden Sea Shipping, Coheung and Diamond.

⁵⁸ AS0046: Application, Section 5.5.

⁵⁹ Hangying Wang, A Deeper Look at China's "Going Out" Policy, **Annex 15**.

⁶⁰ AS0046: Application, Appendix F.2.009.

⁶¹ GOC, Notice on the Implementation Plan for Revitalizing the Economic Operation of Industry and Promoting High-quality Industrial Development, (Development and Reform Industry), [2021] No. 1780, **Annex 16**.

⁶² AS0046: Application, Appendix E.2.1.041, Article 3; AS0046: Application, Appendix E.2.1.042.

⁶³ AS0046: Application, Appendix F.2.027, pp. 26-27.

⁶⁴ OECD, Shipbuilding Policy and Market Developments in Selected Economies 2022, **Annex 17**, p. 12; Jude Blanchette, Jonathan E. Hillman, Mingda Qiu and Maesea McCalpin, Hidden Harbors: China's State-backed Shipping Industry, CSIS, 8 July 2020, **Annex 18**.

⁶⁵ Jude Blanchette, Jonathan E. Hillman, Mingda Qiu and Maesea McCalpin, Hidden Harbors: China's State-backed Shipping Industry, CSIS, 8 July 2020, **Annex 18**.

⁶⁶ World Benchmarking Alliance, China COSCO Shipping, **Annex 19**; AS0046: Application, Appendix F.2.027, p. 26-27.

The Applicant already submitted evidence concerning the strategic relationship between LiuGong and COSCO.⁶⁷

- China Merchants Group ("**CMG**"), including its logistics subsidiary Sinotrans, is also an SOE.⁶⁸

56. Similarly, the Chinese logistics services industry is dominated by SOEs:

- China Logistics Group ("**CLG**") was created by China's State-owned Assets Supervision and Administration Commission ("**SASAC**") as a "new State-owned logistics group."⁶⁹

This entity was the result of a merger between China Railway Materials Group and China National Materials Storage and Transportation, CTS International Logistics, China Logistics and China National Packaging, all of which are subsidiaries of Chengtong Holdings, an SOE.⁷⁰

CLG's main shareholders are the SASAC and China Chengtong, as well as trio of China Eastern Air Holding, COSCO and CMG as "strategic investors."⁷¹

- Xiamen Xiangyu Group, which specializes in logistics and supply chain, is also an SOE.⁷²
- A major portion of the shares of China International Marine Containers ("**CIMC**"), a leading supplier of logistics equipment, is held by Shenzhen Capiial Group, an asset management unit of SASAC and COSCO.⁷³
- China National Materials Storage and Transportation Corporation provides logistics support and is an SOE.⁷⁴
- CMG, an SOE,⁷⁵ also provides logistics services (next to shipping and port management).⁷⁶

57. Finally, Chinese container suppliers for shipping and logistics companies are concentrated in a few Chinese SOEs. The China Container Industry Association reports that "Chinese companies, led by state-owned CIMC now produces more than 95% of the world's shipping containers."⁷⁷ In addition to CIMC, Dong Fang International Containers

⁶⁷ AS0046: Application, Appendix F.2.001, para. 248.

⁶⁸ AS0046: Application, Appendix E.2.1.043, pp. 11, 14; AS0046: Application, Appendix F.2.027, pp. 26-27.

⁶⁹ China Briefing, China's SOE Reforms Continuing with Foreign Investment, Management Restructuring, and Global IPOs, 19 January 2022, **Annex 20**.

⁷⁰ China Development Forum, China Chengtong Holdings Group Ltd., **Annex 21**.

⁷¹ Nikkei Asia, China creates massive state-owned logistics group, 7 December 2021, **Annex 22**.

⁷² Fitch Ratings, Rating Report: Xiamen Xiangyu Corporation, 17 November 2020, **Annex 23**.

⁷³ Jason Jiang, SASAC takes over CIMC, Splash 247, 2 September 2020, **Annex 24**.

⁷⁴ CMST Development Co. Ltd., Brief Introduction, **Annex 25**.

⁷⁵ Martina Li, China Merchants consolidates Sinotrans ownership to enter box shipping sector, 1 November 2011, **Annex 26**.

⁷⁶ China Merchants Group, About Us, **Annex 27**.

⁷⁷ US Federal Maritime Commission, Report of Commissioner Carl. W. Bentzel, Assessment of P.R.C. Control of Container and Intermodal Chassis Manufacturing. Final Report, March 2023, **Annex 28**, p. 20.

("DFIC") is the container manufacturing platform of COSCO.⁷⁸ CIMC and DFIC, both SOEs, produced around 80% of containers in 2021.⁷⁹

58. Third, privately-owned Chinese shipping and logistics providers are entrusted and directed by the GOC in the sense of Regulation 20(e) of the D&S Regulations to provide shipping and logistics providers at LTAR.
59. These entities charge below-market prices in order to match prices set by SOEs. In this regard, prices of shipping services are ultimately determined by the GOC's policies and plans, rather than dictated by the market.⁸⁰ That is also confirmed by 14th Five Year Plan ("FYP14"), which provides for standardization and reduction of logistics charges for transportation for the manufacturing sector.⁸¹
60. For those reasons, the TRA should find that Chinese entities that provide shipping and logistics services to Chinese Excavator producers are public bodies and/or private bodies entrusted and directed by the GOC. As such, the TRA should countervail the provision of shipping and logistics services for LTAR.

3. Conclusion

61. In sum, the Applicant submits that the TRA should:
 - Ensure that it investigates all subsidy schemes from which Chinese Excavator producers benefited during the POI.
 - Use Türkiye or Brazil as the benchmark country to calculate the amount of subsidy from preferential financing from which Chinese Excavator producers benefit.
 - Ensure that the Chinese Excavator producers disclosed all preferential financing and, if this is not the case, rely on facts available.
 - Countervail the land use tax exemption from which Chinese Excavator producers benefited during the POI.
 - Find that the R&D Deduction is specific and, as a result, countervail the R&D Deduction from which Chinese Excavator producers benefited during the POI.
 - Countervail the VAT refunds from which Chinese Excavator producers benefited, including VAT refunds for exports, for small-scale taxpayers, for the advanced manufacturing industry, and for imported technology and equipment.
 - Use Türkiye as the benchmark country to calculate the amount of subsidy from the provision of land use rights at LTAR from which Chinese Excavator producers benefit.
 - Use the electricity price in the U.S. for March 2024, adjusted for the POI using the CPI, to calculate the amount of subsidy from the provision of energy at LTAR from which Chinese Excavator producers benefit.
 - Find that Chinese entities that provide shipping and logistics services to Chinese Excavator producers are public bodies and/or private bodies entrusted and

⁷⁸ DFIC, About us, **Annex 29**.

⁷⁹ Freightwaves, How three Chinese companies cornered global container production, 24 May 2021, **Annex 30**.

⁸⁰ AS0046: Application, Appendix F.2.001, para. 246.

⁸¹ AS0046: Application, Appendix E.2.1.007, p. 21.

directed by the GOC and, as such, countervail the provision of shipping and logistics services for LTAR.

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