

16 April 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: AD0047 – Comments on Addendum to Statement of Essential Facts**  
**Our client: JCB Heavy Products Limited ("Applicant")**

We refer to the UK Trade Remedies Authority's ("**TRA**") addendum ("**Addendum**") to the Statement of Essential Facts ("**SEF**") in the captioned investigation, whereby the TRA invited interested parties to comment on the Addendum by 17 April 2025.<sup>1</sup> We also refer to Caterpillar (Xuzhou) Limited's comments of 1 April 2025.<sup>2</sup> The Applicant hereby submits its comments.

As an initial point, the Applicant reiterates that Caterpillar (Xuzhou) Limited's registration of interest and submissions of data are manifestly out of time and should have been rejected outright by the TRA.<sup>3</sup> As the TRA decided not to reject Caterpillar (Xuzhou) Limited's registration of interest and submissions of data, the Applicant welcomes the TRA's findings in the Addendum, which reconfirm that in-scope excavators ("**Excavators**") originating in China are being dumped on the UK market and cause material injury to the UK Excavator industry.<sup>4</sup>

Further, the Applicant considers that the TRA should:

- Ensure that it makes the corrections to the methodology for calculating dumping identified by the Applicant in its comments on the SEF ("**SEF Comments**") (Section 1).
- Not revise its methodology for calculating profit to construct normal value (Section 2).
- Ensure that it makes the necessary deductions from the export price for the involvement of all related entities in the sale of Chinese Excavators to the UK market (Section 3).
- Confirm its rejection of Caterpillar (Xuzhou) Limited's comments of 1 April 2025 (Section 4)

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<sup>1</sup> AD0047: TRA, Addendum to Statement of Essential Facts, 10 April 2025.

<sup>2</sup> AD0047: Caterpillar (Xuzhou) Limited, CXL Cost Adjustment Methodology, 1 April 2025.

<sup>3</sup> AD0047: Applicant, Response to comments by Caterpillar, Finning UK and LiuGong on Statement of Essential Facts and Provisional Affirmative Determination, 21 January 2025, Section 1.

<sup>4</sup> According to the Addendum, Caterpillar Group includes the following entities for the purposes of the captioned investigation: Caterpillar (Xuzhou) Ltd., Caterpillar SARL (Singapore branch), Caterpillar SARL, Caterpillar (China) Investment Co., Ltd. and Finning (UK) Ltd. See Addendum, Table 1.

**1. The TRA should correct its methodology for calculating dumping in line with the Applicant's earlier comments**

1. The Applicant is concerned that the TRA did not correct its methodology for calculating dumping in line with the Applicant's SEF Comments.<sup>5</sup> To reiterate, the Applicant raised five points on issues where the non-confidential version of the dumping calculations suggests that the TRA's methodology is flawed.
2. First, it appears from the Addendum that the TRA limited the necessary adjustments arising out of a particular market situation ("**PMS**") to raw materials that the TRA deems to be Excavator components.<sup>6</sup> As explained, the PMS in China affects the cost of all material inputs and, therefore, the TRA should include all material inputs for adjustments.<sup>7</sup>
3. Second, the Addendum is silent on whether the TRA compared the labour cost of Caterpillar (Xuzhou) Limited and Caterpillar (China) Investment Co. Limited to that reported by Brazilian Institute of Geography and Statistics and to costs at JCB do Brasil Limitada.<sup>8</sup>
4. Third, the Addendum is silent on whether the TRA reconsidered its findings on finance costs borne by Caterpillar (Xuzhou) Limited and Caterpillar (China) Investment Co. Limited, as such costs are artificially low due to significant distortions caused by state intervention in China.<sup>9</sup>
5. Fourth, it is unclear from the Addendum whether,<sup>10</sup> when constructing the normal value of Excavators manufactured by Caterpillar (Xuzhou) Limited, the TRA used the adjusted, undistorted cost to make to assess which domestic sales were profitable.<sup>11</sup>
6. Fifth, it is unclear from the Addendum whether,<sup>12</sup> when constructing the export price of Excavators manufactured by Caterpillar (Xuzhou) Limited, the TRA deducted the 5.5% profit margin reported by unrelated UK importers for the involvement of any related UK importer.<sup>13</sup>

**2. The TRA should not revise its methodology for calculating profit**

7. The Addendum provides that the TRA has revised its methodology for calculating the profit used to construct normal value. The revised methodology appears to have resulted in significant changes to the dumping margin calculations for the sampled Chinese Excavator producers. The TRA will provide details on its revised methodology only in its final recommendation.<sup>14</sup>
8. The Applicant does not know the precise revisions that the TRA made to its methodology for calculating profit. That said, the Applicant refers to its earlier comments explaining

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<sup>5</sup> AD0047: Applicant, Comments on SEF, 12 December 2024.

<sup>6</sup> Addendum, paras. 26-32.

<sup>7</sup> SEF Comments, Section 1.1.

<sup>8</sup> SEF Comments, Section 1.2.

<sup>9</sup> SEF Comments, Section 1.3.

<sup>10</sup> Addendum, paras. 24-25.

<sup>11</sup> SEF Comments, Section 1.4.

<sup>12</sup> Addendum, paras. 33-34.

<sup>13</sup> SEF Comments, Sections 1.4 and 1.5.

<sup>14</sup> Addendum, paras. 23 and 41-46.

why LiuGong Group's arguments about the TRA's profit calculation are legally and factually wrong.<sup>15</sup>

9. In any event, the Applicant is disappointed that it does not have an opportunity to review and comment on the TRA's decision to revise its methodology for calculating profit. In the Applicant's view, it is not appropriate to make methodological changes that have such a significant impact on the dumping margins this late in the investigation, in particular without giving the applicant an opportunity to comment.
3. **The TRA should make deductions from the export price for all involved Caterpillar entities**
10. The Addendum clarifies that multiple entities in China, Singapore, and Switzerland that are related to Caterpillar (Xuzhou) Limited are involved in the sale of Excavators manufactured by Caterpillar (Xuzhou) Limited to the UK.<sup>16</sup> It is unclear from the Addendum whether the TRA made the necessary deductions from the export price for all related entities.<sup>17</sup>
11. The Applicant notes that when constructing an export price, the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("**D&S Regulation**") provide that the TRA should deduct from the price paid by the first independent purchaser among others the selling, general and administrative ("**SG&A**") costs borne by, and a profit margin for the involvement of, all related entities involved in the export sales transaction. This applies regardless of the physical location of the related entities.
12. The legal basis for making these adjustments for a related entity that acts as the UK importer is Regulations 15(5)-(6) of the D&S Regulations. The legal basis for making these adjustments for other related entities is Regulation 16(2)(a) of the D&S Regulations.<sup>18</sup>
13. For example, if Caterpillar (Xuzhou) Limited sells to Caterpillar SARL Singapore branch, which sells to Caterpillar SARL, which sells to the first independent purchaser in the UK, the TRA should deduct from the export price all the following:
  - The SG&A costs borne by Caterpillar SARL.<sup>19</sup>

As per Regulations 15(5)(a) and 15(6)(g) of the D&S Regulations, this deduction should be for the actual SG&A costs borne by Caterpillar SARL.
  - A profit margin for the involvement of Caterpillar SARL, for which the TRA should use the 5.5% profit made by unrelated UK importers of Excavators.

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<sup>15</sup> AD0047: Applicant, Response to comments by Caterpillar, Finning UK and LiuGong on Statement of Essential Facts and Provisional Affirmative Determination, 21 January 2025, Section 2.

<sup>16</sup> Addendum, para. 12.

<sup>17</sup> Addendum, paras. 33-34; AD0047: TRA, Statement of Essential Facts, paras. 296-298.

<sup>18</sup> The TRA considers that the notion "conditions and terms of sale" covers commissions. The functions of traders in third countries are properly considered as similar to those of an agent working on a commission basis. See, by analogy, e.g., recitals 254-255 (for the importer) and recital 252 (for the other trading companies) to Commission Implementing Regulation (EU) 2024/1923 of 10 July 2024 imposing a provisional anti-dumping duty on imports of titanium dioxide originating in the People's Republic of China, OJ L, 2024/1923, 11.7.2024.

<sup>19</sup> As per Regulation 15(5)(a) of the D&S Regulations.

As per Regulations 15(5)(b) and 15(6)(f) of the D&S Regulations, this deduction should not be for the actual profit margin made by Caterpillar SARL, because it is tainted by the relationship with Caterpillar (Xuzhou) Limited.<sup>20</sup> Instead, the TRA should use a profit made by unrelated UK importers of Excavators.

- The SG&A costs borne by Caterpillar SARL Singapore branch.

As per Regulations 15(5)(a) and 15(6)(g) of the D&S Regulations, this deduction should be for the actual SG&A costs borne by Caterpillar SARL Singapore branch.

- A profit margin for the involvement of Caterpillar SARL Singapore branch, for which the TRA should use the 5.5% profit made by unrelated UK importers of Excavators.

As per Regulations 15(5)(b) and 15(6)(f) of the D&S Regulations, this deduction should not be for the actual profit margin made by Caterpillar SARL Singapore branch, because it is tainted by the relationship with Caterpillar (Xuzhou) Limited.<sup>21</sup> Instead, the TRA should use a profit made by unrelated UK importers of Excavators.

14. Following this approach is not only in line with the D&S Regulations, but would also bring the TRA's practice in line with the "consistent practice" of the European Commission to make SG&A and profit adjustments for the involvement of all related entities, as upheld by the Court of Justice of the European Union.<sup>22</sup> Following this approach is necessary to ensure that the TRA's methodology for calculating dumping results in robust protection for the UK industry.

#### **4. The TRA should confirm the rejection of Caterpillar (Xuzhou) Limited's comments of 1 April 2025**

15. In its comments of 1 April 2025, Caterpillar (Xuzhou) Limited requested the TRA to adjust its methodology for calculating normal value by using Caterpillar Brasil Limitada data instead of JCB do Brasil Limitada data. Caterpillar (Xuzhou) Limited appears to have provided Caterpillar Brasil Limitada data on 14 March 2025 by email.<sup>23</sup>
16. In the Addendum, the TRA rightly rejected Caterpillar (Xuzhou) Limited's request.<sup>24</sup> At the most fundamental level and without going into the errors in Caterpillar (Xuzhou) Limited's request, this request is again simply manifestly out of time. The TRA requested representative country producers to come forward in February 2024 – 13 months (!) before Caterpillar (Xuzhou) Limited made its request. As explained, this alone suffices to reject Caterpillar (Xuzhou) Limited's request outright.<sup>25</sup>

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<sup>20</sup> See above, para. 6.

<sup>21</sup> See above, para. 6.

<sup>22</sup> See, e.g., recital 186 to Commission Implementing Regulation (EU) 2025/4 of 17 December 2024 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of titanium dioxide originating in the People's Republic of China, OJ L, 2025/4, 9.1.2025.

<sup>23</sup> AD0047: Caterpillar (Xuzhou) Limited, CXL Cost Methodology, 1 April 2025.

<sup>24</sup> Addendum, paras. 29-30.

<sup>25</sup> AD0047: Applicant, Response to comments by Caterpillar, Finning UK and LiuGong on Statement of Essential Facts and Provisional Affirmative Determination, 21 January 2025, Section 1.